

Exhibit 1

Declaration of Under Secretary of State William J. Burns Regarding Germany

DECLARATION BY UNDER SECRETARY OF STATE WILLIAM J. BURNS

I, William J. Burns, hereby declare and state as follows:

1. I am the Under Secretary of State for Political Affairs, a position I have held since May 2008. Prior to my current position, I have served in a number of posts since entering the Foreign Service in 1982, including, among others: Ambassador to Russia, Assistant Secretary of State for Near Eastern Affairs, and Ambassador to Jordan.
2. The United States and Germany signed an Executive Agreement on July 17, 2000, in which Germany committed to establish the Foundation, "Remembrance, Responsibility and the Future," to compensate victims of the Nazi era, and the United States committed to take certain steps to assist Germany and German Companies in achieving "legal peace" in the United States with respect to such claims. The background of these efforts and a statement of U.S. foreign policy interests in the implementation of the Agreement are stated in the October 19, 2000 declaration of former Deputy Secretary of Treasury Stuart Eizenstat, and the October 20, 2000 statement of former Secretary of State Madeleine Albright (attached).
3. The foreign policy interests in "legal peace" for covered companies described by Secretary Albright and Deputy Secretary Eizenstat are enduring and extend beyond Germany's successful implementation of the Agreement. The United States' efforts to facilitate this cooperative compensation arrangement are part of a larger policy to ensure the greatest compensation for the greatest number of Holocaust victims and their heirs, in their lifetimes, as well as to support a broad "legal peace" for countries and companies subject to ongoing claims.

I declare under penalty of perjury that the foregoing is true and correct.

Dated 2/7/2011



William J. Burns
Under Secretary of State for Political Affairs

Exhibit 2

Declaration of Stuart E. Eizenstat Regarding Germany

DECLARATION OF STUART E. EIZENSTAT

I, Stuart E. Eizenstat, hereby declare and state as follows:

1. I am currently the Deputy Secretary of the Treasury, as well as the Special Representative of the President and the Secretary of State on Holocaust Issues, positions I have held since July 1999. Prior to my current position, I served as Under Secretary of State for Economic Affairs, and before that as Under Secretary of Commerce and as U.S. Ambassador to the European Union. Since 1995, I have been the Secretary of State's Special Envoy on Property Restitution in Central and Eastern Europe.

2. A number of lawsuits have been filed in recent years on behalf of Holocaust survivors, other victims of the Nazi era, and their heirs to recover, among other things, looted property, compensation for slave and forced labor, proceeds of unpaid insurance policies, and assets deposited in dormant or confiscated bank accounts.

3. As a matter of policy, the United States Government believes that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation, rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation. This is because the U.S. supports efforts to bring some measure of justice to these victims in their lifetimes, and because the U.S. believes that available funds

should be spent on the victims and not on litigation, and, importantly, also because the number of victims who can be covered by a negotiated settlement is often greater than can be achieved through litigation. Much of my work over the past five years has been devoted to effectuating this policy.

4. Most recently, and most relevant to this litigation, I led an inter-agency United States Government team in negotiations resulting in the creation of a foundation to make payments to victims of German companies and the Nazi regime during the Nazi era and World War II. This declaration sets forth the history of those negotiations and the basis upon which the United States Government has concluded that it would be in its foreign policy interest for that foundation to be the exclusive remedy and forum for all claims against German companies arising out of the Nazi era and World War II, including those raised in this litigation.

Background of German Foundation Negotiations

5. In the Fall of 1998, I was asked by the German Government to help facilitate a resolution of class action lawsuits filed in U.S. courts arising from slave and forced labor and other wrongs during the Nazi era. During the subsequent year and a half, I co-chaired a series of formal and informal discussions among lawyers representing the victims, lawyers for German companies, and the German Government on a proposed initiative to establish a foundation to make payments to victims

of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era.

6. A number of other participants have been involved in this effort, including the State of Israel, the governments of five Central and East European countries (Belarus, the Czech Republic, Poland, Russia, and Ukraine), and the Conference on Jewish Material Claims Against Germany, a non-governmental organization created to negotiate for and administer compensation for Nazi crimes to Jewish people around the world.¹ Through these participants and the numerous plaintiffs' attorneys, the victims' interests were broadly and vigorously represented. Representatives of German industry, banks, and insurance companies were also involved throughout the lengthy negotiations.

7. The initiative was publicly announced on February 16, 1999, by the Chancellor of Germany, Gerhard Schroeder, and a group of German companies that conceived the initiative. Later that Spring, together with German Chancellery Minister Bodo Hombach, I co-chaired the first of twelve formal conferences discussing the initiative. Minister Hombach was later replaced

¹ The Conference on Jewish Material Claims against Germany ("CJMC") is an umbrella organization under which various Jewish groups and organizations of Holocaust survivors are represented. Among the participating groups and organizations are the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, B'nai B'rith International, the Centre of Organizations of Holocaust Survivors in Israel, and the World Jewish Congress.

by Count Otto Lambsdorff, Special Representative of the Chancellor, who co-chaired the talks with me to their conclusion.

8. In December 1999, following the personal involvement of the President of the United States and of Chancellor Schroeder, the negotiations reached a major breakthrough. The parties agreed on two key points: that the German Government and companies would establish a foundation, capitalized by DM 10 billion, to make payments to forced laborers and others who suffered at the hands of German companies during the Nazi era and World War II, and that, in exchange, the plaintiffs would voluntarily dismiss their lawsuits against German companies asserting claims arising out of the Nazi era and World War II. The United States Government further agreed to support this effort by filing a Statement of Interest indicating its own foreign policy interests in assisting Holocaust victims on an expedited basis, and in helping achieve legal peace for German companies in U.S. courts.

9. The parties agreed on detailed eligibility requirements and other procedures to govern the foundation's operation. The parties also came to agreement on precise allocations of the foundation capital to compensate various types of injuries, and on payment levels for individual victims. These agreements were incorporated into draft legislation being prepared by the German Government to establish the foundation.

10. The negotiations to reach these agreements were extremely difficult. The parties were initially far apart on an amount for a capped fund that would be required to resolve the ongoing litigation. Moreover, long negotiations were required to reach agreement on allocation of the capped fund among the various categories of victims, which eventually was agreed down to the last mark.

11. In July 2000, the German Parliament passed a law creating the Foundation "Remembrance, Responsibility, and the Future" (the "Foundation"), closely embodying the detailed agreements we negotiated.

12. On July 17, 2000, the parties to the negotiations gathered in Berlin to sign a Joint Statement concluding the negotiations, and expressing their support for the Foundation. See Exh. A. Simultaneously the United States and Germany signed an Executive Agreement, in which Germany committed that the operation of the Foundation would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain steps to assist German companies in achieving "legal peace" in the United States for claims arising out of the Nazi era and World War II. See Exh. B.

13. On August 12, 2000, the law creating the Foundation was promulgated and entered into effect. Two meetings of the Foundation Board have thus far been held in Berlin. On October

19, 2000, the United States and German Governments exchanged diplomatic notes stipulating, in accordance with Article 5 of the Executive Agreement, that the agreement entered into force on the date of the exchange of notes. See Exh. C.

14. The role played by the United States in this negotiation was unique. The Executive Agreement negotiated is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its nationals or anyone else. Instead, the intent of our participation was to bring together the victims' constituencies on one side and the German Government and companies on the other, to bring expeditious justice to the widest possible population of survivors, and to help facilitate legal peace. Among these parties, the United States facilitated the essential arrangement by which the German side would establish a DM 10 billion foundation to compensate categories of Nazi era and World War II victims, and the class action representatives in pending United States litigation (as well as anyone else who received compensation through the Foundation) agreed to give up their claims, by voluntary dismissals with respect to the plaintiffs in cases in United States courts. The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the Foundation being treated as the exclusive remedy for World War II

and Nazi era claims against German companies, and, concomitantly, in current and future litigation being dismissed.

The Foundation

15. As established under German law, the Foundation will make payments to persons who suffered at the hands of German companies during the Nazi era, as well as those who worked as slave or forced laborers for the Nazi regime.

16. The DM 10 billion Foundation capital will be used for payments to all eligible recipients as follows. Payments to former slave laborers - those who were intended to be literally worked to death - will be DM 15,000. The payments to other forced laborers - those for whom living conditions were somewhat less harsh - are expected to approach DM 5,000. In total, just over DM 8 billion of the Foundation's capital will be used for dignified payments to former forced and slave laborers. Those who suffered other non-labor related personal injuries, such as being subject to medical experimentation or being held in a "kinderheim" (children's home), will be eligible to apply for pro-rata payments from a separate DM 50 million pool.

17. Individuals who had property "aryanized" or otherwise stolen or damaged by German companies, or whose insurance policies went unpaid, or their heirs, are also eligible to receive payments. DM 200 million were set aside for pro-rata payments for property claims, with an additional DM 300 million

in a humanitarian fund for individuals unable to document specific claims. Similarly, DM 500 million, plus DM 50 million from interest if needed, is set aside for payments to individuals whose insurance policies were unpaid or nationalized.

18. The insurance payments will be made through the International Commission on Holocaust Era Insurance Claims, chaired by former Secretary of State Lawrence Eagleburger, which was established to address the issue of unpaid insurance policies issued to victims of the Holocaust. The International Commission includes as members some of the largest insurance companies in Europe, including the German insurer Allianz, as well as state insurance regulators and victims' representatives. The Commission has created a claims adjudication mechanism and a humanitarian fund to supplement the claims process, both of which will receive funding from the Foundation.

19. Finally, DM 700 million will go into a Future Fund, the purposes of which will include to promote tolerance and Holocaust awareness, and to support projects that benefit the heirs of those forced and slave laborers who did not survive.² The remaining DM 200 million of the Foundation's initial capital will be used for administration of the Foundation and for attorneys' fees. Lawyers in United States court actions can seek fees

² Up to DM 100 million of the Future Fund's capital can be used to supplement the funds needed to pay insurance claims if the DM 200 million set aside for such claims is not sufficient.

through an arbitration process, with the total fee award capped at no more than DM 125 million.

20. A key point regarding the Foundation is that all victims who suffered injury at the hands of German companies, or who performed forced or slave labor for German companies or the Nazi regime, are eligible to apply for its benefits. Indeed, throughout the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs in their cases, but also the interests of heirs and others who are similarly situated.

Operation of the Foundation

21. The Foundation will be run by a Board of Trustees chaired by Dr. Dieter Kastrup, German Ambassador to the United Nations, and consisting of 26 other people, evenly divided between representatives of the German Government and companies on the one hand, and representatives of the victims and the United States on the other. The Board of Trustees has selected a three-person Board of Directors to manage the Foundation's day-to-day operations. Those aspects of the Foundation's operation that are not mandated by the legislation creating it will be determined by these two bodies.

22. All Foundation operations will be transparent and the by-laws and similar procedures governing its operation will be made public. The Foundation is subject to legal oversight by the

German Government, and will also be audited by two agencies within the German Government.

23. The Foundation will not make direct payments to individuals. Instead, the Foundation will work with seven "partner organizations," which in turn are responsible for collecting and processing applications and making payments. The partner organizations include five geographically-based foundations in Central and Eastern Europe (to process applications from residents of those countries), the Conference on Jewish Material Claims Against Germany (which will handle applications of Jews in the rest of the world), and the International Organization for Migration (responsible for all other applications). Each of these organizations has been allocated specific funds, based on estimated numbers of applicants, to distribute.

24. The Foundation has begun the process to ensure that all eligible applicants worldwide are notified of its existence and their opportunity to apply for benefits. First, the Foundation's creation in July 2000 received extensive publicity around the world. Second, the Foundation is working in conjunction with the partner organizations to create application forms that will be mailed to extensive, existing lists of potentially eligible individuals. Third, the Foundation Board has directed each partner organization to develop a plan for publicity designed to

reach the maximum number of potentially eligible individuals.

25. The application process will be short, simple, and non-bureaucratic. It will not be adversarial, and applicants will not need legal representation to apply. In most cases, applicants have until April 2001 to apply (although this period can be extended if the Board determines it to be necessary), but applications for labor payments will be processed on a rolling basis. Determinations of eligibility are to be made on relaxed standards of proof, rather than the higher burdens of proof required in litigation in United States courts. Each partner organization must also set up an independent and free-of-charge appeals process.

26. The Foundation also permits expedited payments to victims. Once a slave laborer, for example, is determined to be eligible, the partner organization may immediately pay half of the expected total payment (i.e., up to DM 7,500), with the balance to be paid at the end of the claims period, once all applications have been processed. Similarly, a forced laborer may receive 35% of the expected total payment immediately upon application. In addition, the Board of Trustees has specific authority to increase the amount of the first installment payments if it deems it appropriate. In any case, under this system the Foundation's goal is that payments to victims will begin during calendar year 2000.

27. Property claims will be processed by a 3-person committee supervised by the International Organization for Migration. The committee is expected to complete processing of all applications and make payments within one year from the close of the application period. Insurance claims will be processed according to claims handling procedures established by the International Commission on Holocaust Era Insurance Claims, whose claims process has already begun, or according to such procedures that may be agreed among the Foundation, the International Commission, and the German Insurance Association.

The United States' Interests in the Foundation

28. The creation and successful operation of the Foundation is in the enduring and high interests of the United States. The United States Government believes, for the reasons set forth below, that all claims against German companies arising from their involvement in the Nazi era, including but not limited to claims relating to slave and/or forced labor, aryanization, medical experimentation, placement in children's homes, other cases of personal injury, and damage to or loss of property, including banking assets and insurance policies, should be pursued through the Foundation instead of the courts.

29. First, it is an important policy objective of the United States to bring some measure of justice to Holocaust survivors and other victims of the Nazi era, who are elderly and

are dying at an accelerated rate, in their lifetimes. Over one hundred thousand Holocaust survivors, and tens of thousands of other Americans who were slave or forced laborers during World War II, live in the United States. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

30. The Foundation is an excellent example of how such cooperation can lead to a positive result. The Foundation will, without question, provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays and legal hurdles. Moreover, the Foundation will employ standards of proof that are more relaxed than would be the case with litigation. Litigation, even if successful, could only benefit workers of the German companies subject to the jurisdiction of U.S. courts. By contrast, the Foundation will benefit all workers - from existing and defunct companies, from private and public companies, and from S.S.-controlled companies. It will also benefit those in the other categories mentioned above - in fact, all who may have been injured by German industry. Even forced agricultural workers can be paid by the partner organizations. Indeed, as a result of the participation in the Foundation not only by the German Government and German companies that existed during the Nazi era, but also by German companies that did not exist during the Nazi era, the Foundation

will be able to comprehensively cover slave and forced laborers and other victims of the Nazi era and World War II.

31. All participants in the negotiations accepted the level of the Foundation's funding, eligibility criteria, payment system, and the allocation of its funding among various categories of victims. No amount of money could truly compensate plaintiffs for the wrongs done to them. But the payments they will receive through the Foundation will serve as a recognition of their suffering and will enable them to live with less difficulty than would be the case without the payments. In addition, creation of the Foundation will allow establishment of the Future Fund, which will be dedicated in part to efforts to ensure that crimes like the Holocaust never happen again, and will also fund projects that serve to benefit the heirs of victims that did not survive.

32. The United States, together with the participating lawyers for the victims and all other parties to the negotiations, therefore believes that the Foundation is fair under all the circumstances. The creation of the Foundation, the United States hopes, will serve as an example to other nations and in other cases where resolution of claims by victims of the Nazi era for restitution and compensation has not yet been achieved.

33. Second, establishment of the Foundation helps further the close cooperation between the United States and its important European ally and economic partner, Germany. One of the most important reasons the United States took such an active role in facilitating a resolution of the issues raised in this litigation is that we were asked by the German Government to work as partners with them in helping to make the Foundation initiative a success. Since 1945, the United States has sought to work with Germany to address the consequences of the Nazi era and World War II through political and governmental acts, beginning with the first compensation and restitution law in post-war Germany that was passed by U.S. occupation forces. In recent years, German-American cooperation on these and other issues has been very close, culminating in the joint effort to develop the Foundation, which has helped solidify the ties between our two countries, ties which are central to U.S. interests in Europe.

34. Germany today is a key to the security and prosperity of the broader North Atlantic Community. Germany has been a partner of the United States in promoting and defending democracy for the last fifty years, and is vital to both the security and economic development of Europe. Germany has been a leader in efforts to create stability in Europe through expansion of NATO to include the former communist countries of Central Europe, and through the building of bridges between NATO and Russia. Germany

has also been a leader in supporting integration of the European Union, and in the effort to assure that the former communist countries of Central and Eastern Europe continue their democratic development within a market economy. Our continued partnership with Germany is important to helping achieve these United States interests.

35. Third, the Foundation helps further the United States' interest in maintaining good relations with Israel and with Western, Central, and Eastern European nations, from which many of those who suffered during the Nazi era and World War II come. A large percentage of the money allocated will go to the too-long forgotten "double victims" of two of the twentieth century's worst evils - Nazism and Communism. Some one million citizens of Central and Eastern Europe were forced into labor by the Nazis, and then lived for over four decades under the iron rule of Communist governments and were denied compensation from Germany until recent years. The Foundation represents the first comprehensive effort to assist surviving laborers, mostly non-Jewish, in the former Iron Curtain countries, and, indeed, in other European countries. The Government of Israel too was directly involved in the negotiations to create the Foundation, will see many of its citizens benefit from the Foundation's programs, and has recognized and indicated its appreciation for U.S. efforts in support of the Foundation.

36. Fourth, the participating plaintiffs' counsel, the defendants, victims' representatives, and various concerned governments are united in seeking dismissal of this litigation in favor of the remedy provided by the Foundation, and the United States strongly supports this position. The alternative to the Foundation would be years of litigation whose outcome would be uncertain at best, and which would last beyond the expected life span of the large majority of survivors. Ongoing litigation could lead to conflict among survivors' organizations and between survivors and German industry, conflicts into which the United States and German governments would inevitably be drawn. There would likely be threats of political action, boycotts, and legal steps against corporations from Germany and other nations, setting back European-American economic cooperation.

37. Although the resolution of this litigation is not part of a "settlement" in name, the German companies and German Parliament have insisted on dismissal of all pending litigation in the United States in which Nazi era and World War II claims are asserted against German companies as a precondition to allowing the Foundation to make payments to victims. The United States strongly supports the creation of the Foundation, and wants its benefits to reach victims as soon as possible. Therefore, in the context of the Foundation, it is in the enduring and high interest of the United States to vindicate that

forum by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all Nazi era and World War II claims against German companies.

38. Fifth, and finally, the Foundation is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Since its founding, the Federal Republic of Germany has made compensation and reconciliation for wrongs committed during the Nazi era an important part of its political agenda. Although no amount of money will ever be enough to make up for Nazi-era crimes, the German Government has created significant compensation, restitution, and pension programs for Nazi-era acts that have resulted in payments of nearly \$100 billion in today's dollars. The Foundation adds another \$4.3 billion to that total, and complements these prior programs, for the first time including a significant contribution by the German private sector.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February, 2009

Stuart E. Eizenstat
Stuart E. Eizenstat
Deputy Secretary of the Treasury
and Special Representative of the
President and Secretary of
State on Holocaust Issues

Exhibit 3

Statement by Secretary of State
Madeleine K. Albright Regarding Germany

U.S. DEPARTMENT OF STATE
Office of the Spokesman

For Immediate Release
2000/1141

October 20, 2000

STATEMENT BY SECRETARY OF STATE MADELEINE K. ALBRIGHT

**ESTABLISHMENT OF THE GERMAN FOUNDATION
"REMEMBRANCE, RESPONSIBILITY AND THE FUTURE"**

1. The United States and the Federal Republic of Germany ("Germany") are proud to have worked together, in close partnership, towards the establishment of the Foundation, "Remembrance, Responsibility and the Future" ("Foundation"). The establishment of the Foundation is a great and historic achievement, as it will provide a measure of justice to more than a million victims of the Nazi era. It represents a fulfillment of the United States' and Germany's 50 year effort to address the consequences of the Nazi era. The establishment of this Foundation will contribute substantially to U.S.-German efforts to create a stable and humane international community based on democracy, rule of law, and respect for human rights. Continued cooperation between two of the world's strongest allies is crucial to the foreign policies of both countries and to the promotion of peace and prosperity in the world.
2. This statement explains why the establishment of the Foundation is in the foreign policy interests of the United States and why it would be in the foreign policy interests of the United States for the Foundation to be the exclusive forum and remedy for the resolution of all claims asserted against German companies arising out of the Nazi era and the Second World War.
3. The establishment of the Foundation will result in benefits for U.S.-German economic relations and the economic interests of the United States. German investment in the United States is responsible for more than 600,000 jobs. German corporations have helped create important industrial investments in several regions of the United States. The operations of more than 1800 American companies in Germany make an important contribution to both the German and American economies. Dismissal of the litigation involving Nazi-era claims against German companies will help to maintain this economic cooperation and increase the possibilities for further development of this cooperation. Therefore, it is in the foreign policy interests of the United States to have a resolution of these issues that is non-adversarial and non-confrontational, outside of litigation.
4. German-American cooperation has been exemplary throughout these discussions. Our two governments, represented by Deputy Treasury Secretary Eizenstat and Count Lambsdorff, have served as facilitators of this historic effort to reconcile the complex and painful results of the Nazi era and the Second World War. The cooperation between Germany and the United States and the strong U.S.-German relationship enabled the co-chairmen to resolve a series of very complex and difficult political issues during the negotiations. This cooperation has reflected the spirit of the close relationship that has

developed between the United States and Germany during the past fifty years. Our ties to Germany are central to American interests in Europe. Germany has been a key partner in Allied efforts to renew NATO so that America and its European partners can effectively address the changed European security environment of the post Cold War era. Germany participated actively in NATO's Kosovo campaign and German and American troops serve side-by-side in Kosovo and Bosnia. The strong U.S.-German relationship provides a firm basis for increased U.S.-EU cooperation on a wide range of foreign policy issues. The establishment of this Foundation will strengthen these ties.

5. The Foundation will cover, under relaxed standards of proof, some one million victims, including those who worked for German companies now defunct or not subject to U.S. jurisdiction, including SS companies and companies owned by the German government. Indeed, the German legislation will permit the Reconciliation Foundations in Central and Eastern European countries to even pay forced agricultural workers, if they wish to do so. For these groups of people, the Foundation represents the only possible avenue for obtaining a measure of long-awaited justice.

6. The establishment of this Foundation will also serve as one of the high points in the United States' relationship with the Central and Eastern European Governments that participated in the negotiations leading up to the establishment of the Foundation. As a result of the close cooperation between the United States and the participating Central and Eastern European Governments, nearly one million residents of Central and Eastern Europe will be receiving a long-awaited and deserved measure of justice. One of the most important achievements of the Foundation will be to provide a measure of justice not only to Jewish victims of the Nazi era, but belated recognition and payments to these double victims of two of the 20th Century's worst evils -- Nazism and Communism.

7. Moreover, by bringing together the Central and Eastern European states and the State of Israel, the Foundation will begin a new relationship among nations and peoples who suffered so severely under Nazi terror. The cooperation among these states was reinvigorated, and was never more evident than, during the eighteen months of discussions concerning the German Foundation.

8. The establishment of the Foundation will significantly reduce the tensions surrounding a number of very sensitive issues. It will fund payments to victims of the Nazi era who otherwise would have to engage in continued litigation over the subject, without any certainty of recovery. The United States and German Governments would inevitably be drawn into ongoing debates among victims' representatives, as would the Governments of six Central and Eastern European countries and the State of Israel, which participated in the negotiations leading to the establishment of the Foundation. The vast majority of the survivors reside in these countries. The debates would likely be contentious and, in the United States, result in threats of boycotts, and political and legal action at the federal, state, and local levels against German companies and the German Government. This could then trigger retaliatory action not only by Germany, one of our most valued allies, but by the European Union as well. Merely the threat of sanctions and boycotts could have a chilling effect on our political and economic relations with Germany and Europe.

9. Finally, it is in the foreign policy interests of the United States to take steps to address the consequences of the Nazi era, to learn the lessons of, and teach the world about, this dark chapter in Germany's history and to seek to ensure that it never happens again. As all too recent history has shown us, e.g., in Bosnia and Kosovo, massive human rights violations and ethnic cleansing continue to occur and continue to necessitate United States involvement. In an effort to teach the world, not only about the atrocities of the Nazi era, but the threat posed by totalitarian, unlawful regimes, and tyranny, the Foundation has at its disposal over \$300 million of the Foundation's capital, which will be dedicated, in part, to heighten understanding of the causes of the Holocaust and the Nazis' rise to power, as well as to help the heirs of deceased slave and forced laborers.

10. For all of the above reasons, and because the German Government asked the United States to work as partners with it in facilitating this historic initiative, from February 1999 until July 2000, the United States played a central role in facilitating discussions among the Governments of Belarus, the Czech Republic, Germany, Poland, Russia, and the Ukraine, the Conference on Jewish Material Claims, other victims' representatives, and German companies to establish this Foundation, which will provide funds for dignified payments to those who worked as private and public sector forced and slave laborers during the Nazi era who suffered at the hands of German companies during this period.

11. German companies and the German Government have both agreed to contribute DM 5 billion to establish this Foundation. In return, they seek and deserve legal peace for the acts of German companies arising out of the Nazi era and World War II. Our mutual interest in this regard is reflected by the Executive Agreement between our two governments. Moreover, President Clinton has determined that it would be in the United States' foreign policy interest for the Foundation to be the exclusive remedy for all claims against German companies arising out of the Nazi era and the Second World War.

Exhibit 4

Declaration of Special Envoy
Douglas A. Davidson Regarding Germany

DECLARATION BY SPECIAL ENVOY DOUGLAS A. DAVIDSON

I, Douglas A. Davidson, hereby declare and state as follows:

1. I am the Special Envoy for Holocaust Issues in the United States Department of State.
2. This declaration describes Germany's implementation of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation "Remembrance, Responsibility, and the Future" ("German Foundation Agreement"). The United States regards Germany's commitments under this Agreement to be fully implemented.
3. The German Foundation Agreement, together with similar agreements between the United States and Austria and the United States and France—and a separate agreement that involved the German Foundation, the German Insurance Association, and the International Commission on Holocaust Era Insurance Claims—were the result of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Although no amount of money could ever fully redress Nazi-era crimes, the German Federal Government has created compensation, restitution, and other benefit programs for Nazi-era acts that have resulted in significant payments to a large number of Holocaust survivors and other victims of the Nazi era in their lifetimes. In the first round of compensation and restitution up until the mid 1990s, Germany provided payments and benefits of an estimated €55 to €59 billion to hundreds of thousands of victims of Holocaust-related atrocities and losses. In the second round, that is since the signing of the German Foundation Agreement in July 2000, Germany has paid out nearly €5 billion to approximately 1.6 million Nazi victims under this Agreement. Germany has also continued to make payments and restitution to victims based on previously-established German

programs. These payments, since the signing of the July 2000 Agreement, and other programs have brought the total amount of German public sector compensation to Nazi victims to €66 billion by the end of the year 2008, according to a study by the German Finance Ministry.

4. To summarize the payments made pursuant to the German Foundation Agreement: the Foundation paid out €4.5 billion to 1.6 million Forced and Slave Laborers, €54 million to compensate for other personal injuries; €89 million for property claims; and €281 million for insurance claims and related humanitarian payments which benefited thousands of claimants not compensated in German insurance compensation programs from the 1950s, 1960s, and 1970s. All of the Foundation Funds have been disbursed. In addition, the German Foundation Agreement endowed a €358 million "Future Fund" that continues to operate today and provides benefits to surviving Nazi victims and keeps alive the memory of the Holocaust.

5. The United States' view is that its long-standing, and ongoing, pursuit of cooperative compensation arrangements with Germany and other governments has achieved justice for the greatest numbers of Holocaust victims, survivors and heirs. Going forward, the United States is focusing its efforts in this regard on the new democracies of Central and Eastern Europe where the preponderance of Europe's Jewish population once lived. It is important to these ongoing efforts that the United States fully perform its obligations by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all claims against Germany and German companies covered by the German Foundation Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Dated 2/14/2011

Douglas A. Davidson

Douglas A. Davidson
Special Envoy for Holocaust Issues

Exhibit 5

Executive Agreement Between the United States and Germany

No. 37134

**Germany
and
United States of America**

Agreement between the Government of the Federal Republic of Germany and the Government of the United States of America concerning the Foundation "Remembrance, Responsibility and the Future" (with annexes and joint statement). Berlin, 17 July 2000

Entry into force: 19 October 2000 by notification, in accordance with article 5

Authentic texts: English and German

Registration with the Secretariat of the United Nations: Germany, 15 December 2000

**Allemagne
et
États-Unis d'Amérique**

Accord entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement des États-Unis d'Amérique relatif à la Fondation "Souvenir, responsabilité et l'avenir" (avec annexes et déclaration commune). Berlin, 17 juillet 2000

Entrée en vigueur : 19 octobre 2000 par notification, conformément à l'article 5

Textes authentiques : anglais et allemand

Enregistrement auprès du Secrétariat des Nations Unies : Allemagne, 15 décembre 2000

Volume 2130, I-37134

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND THE FUTURE"

The Government of the Federal Republic of Germany and the Government of the United States of America,

Intending to shape relations between their two States in a spirit of friendship and co-operation for the future and to successfully resolve issues stemming from the past,

Recognizing that the Federal Republic of Germany has, building on Allied legislation and in close consultation with victims' associations and interested Governments, provided, in an unprecedented manner, comprehensive and extensive restitution and compensation to victims of National Socialist persecution,

Noting the historic announcement on February 16, 1999, made by the Federal Chancellor and German companies, in which the companies stated their intention to establish a foundation to compensate forced laborers and others who suffered at the hands of German companies during the National Socialist era and World War II,

Noting that, by means of the Foundation Initiative, its member companies wish to respond to the moral responsibility of German business arising from the use of forced laborers and from damage to property caused by persecution, and from all other wrongs suffered during the National Socialist era and World War II,

Recognizing as legitimate the interest German companies have in all-embracing and enduring legal peace in this matter, and further recognizing that such interest was fundamental to the establishment of the Foundation Initiative,

Noting that the two Governments announced that they welcomed and support the Foundation Initiative,

Noting that the Federal Republic of Germany and German companies have since agreed on the creation of a single Foundation, "Remembrance, Responsibility and the Future" (the "Foundation"), formed under German federal law as an instrumentality of the Federal Republic of Germany and funded by contributions from the Federal Republic of Germany and the German companies,

Recognizing that German business, having contributed substantially to the Foundation, should not be asked or expected to contribute again, in court or elsewhere, for the use of forced laborers or for any wrongs asserted against German companies arising from the National Socialist era and World War II,

Recognizing that it is in the interest of both parties to have a resolution of these issues that is non-adversarial and non-confrontational, outside of litigation,

Recognizing that both parties desire all-embracing and enduring legal peace to advance their foreign policy interests,

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Noting in this regard the June 16, 2000, letter of the Assistant to the President of the United States for National Security Affairs and the Counsel to the President of the United States and the July 5, 2000, letter of the Foreign Policy and Security Advisor of the Chancellor of the Federal Republic of Germany, copies of which have been made public,

Having worked as partners, in consultation with other interested parties and governments, to assist German companies to achieve wide support for the total amount of funds and the eligibility criteria of the Foundation and for the establishment of all-embracing and enduring legal peace,

Noting that the Foundation will assure broad coverage of victims and broad participation by companies which would not be possible through judicial proceedings,

Believing that the Foundation will provide as expeditious as possible a mechanism for making fair and speedy payments to now elderly victims,

Having in mind that the Foundation covers, and that it would be in the interests of both parties for the Foundation to be the exclusive remedy and forum for addressing, all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II,

Recalling that for the last 55 years the parties have sought to work to address the consequences of the National Socialist era and World War II through political and governmental acts between the United States and the Federal Republic of Germany,

Noting that this Agreement and the establishment of the Foundation represent a fulfillment of these efforts,

Recognizing that the German Government has tabled a Bill before the German Federal Parliament ("Bundestag") to establish the Foundation,

Have agreed as follows:

Article I

(1) The parties agree that the Foundation "Remembrance, Responsibility and the Future" covers, and that it would be in their interests for the Foundation to be the exclusive remedy and forum for the resolution of, all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II.

(2) The Federal Republic of Germany agrees to ensure that the Foundation shall provide appropriately extensive publicity concerning its existence, its objectives and the availability of funds.

(3) Annex A sets forth the principles that shall govern the operation of the Foundation. The Federal Republic of Germany assures that the Foundation will be subject to legal supervision by a German governmental authority; any person may request that the German governmental authority take measures to ensure compliance with the legal requirements of the Foundation.

(4) The Federal Republic of Germany agrees that insurance claims that come within the scope of the current claims handling procedures adopted by the International Commission of Holocaust Era Insurance Claims ("ICHEIC") and are made against German insurance companies shall be processed by the companies and the German Insurance

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Association on the basis of such procedures and on the basis of additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association.

Article 2

(1) The United States shall, in all cases in which the United States is notified that a claim described in article 1 (1) has been asserted in a court in the United States, inform its courts through a Statement of Interest, in accordance with Annex B, and, consistent therewith, as it otherwise considers appropriate, that it would be in the foreign policy interests of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims asserted against German companies as defined in Annex C and that dismissal of such cases would be in its foreign policy interest.

(2) The United States, recognizing the importance of the objectives of this agreement, including all-embracing and enduring legal peace, shall, in a timely manner, use its best efforts, in a manner it considers appropriate, to achieve these objectives with state and local governments.

Article 3

(1) This agreement is intended to complement the creation of the Foundation and to foster all-embracing and enduring legal peace for German companies with respect to the National Socialist era and World War II.

(2) This agreement shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era and World War II.

(3) The United States will not raise any reparations claims against the Federal Republic of Germany.

(4) The United States shall take appropriate steps to oppose any challenge to the sovereign immunity of the Federal Republic of Germany with respect to any claim that may be asserted against the Federal Republic of Germany concerning the consequences of the National Socialist era and World War II.

Article 4

Annexes A, B and C shall be an integral part of this Agreement.

Article 5

This Agreement shall enter into force on the date on which the parties agree by exchange of notes.

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Done at Berlin on the 17th day of July, 2000, in duplicate in the German and English languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany
WOLFGANG ISCHINGER

For the Government of the United States of America
JOHN KORNBLOM

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ANNEX A OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND THE FUTURE"

Principles Governing the Operation of the Foundation

Article 1(3) of the Agreement provides that the principles governing the operation of the Foundation will be set forth in Annex A. This Annex reflects key elements of the Foundation that form a basis for the Parties' mutual commitments in the Agreement.

1. The Foundation legislation will state that the purpose of the Foundation is to make payments through partner organizations to those who suffered as private and public sector forced or slave laborers and those who suffered at the hands of German companies during the National Socialist era and to establish a "Remembrance and Future Fund" within the Foundation. It will state that the permanent task of the "Remembrance and Future Fund" is to support projects that (a) serve to promote understanding between nations, and serve social justice and international cooperation in the humanitarian sector; (b) support youth exchange programs and keep alive the memory of the Holocaust and the threat posed by totalitarian, unlawful regimes and tyranny; and (c) also benefit the heirs of those who have not survived.

2. The Foundation legislation will provide for a Board of Trustees that consists of an equal number of members appointed by the German Government and German companies and by other government and victims' representatives, except that the Chairman shall be a person of international stature appointed by the Chancellor of the Federal Republic of Germany. The Board may be reduced in size after four years, but the balance of the membership will continue, to the extent appropriate. The Board will adopt by-laws by a two-thirds majority vote. All Foundation operations will be transparent and by-laws and similar procedures will be made public.

3. The Foundation legislation will provide that the Foundation will be audited by the Federal Accounting Office and that all partner organizations will also be audited.

4. The Foundation legislation will provide that persons who were held in concentration camps as defined under the Federal Compensation Law ("BEG") or in another place of confinement or ghetto under comparable conditions and were subject to forced labor ("slave laborers") will be eligible to receive up to DM 15,000 each. The Foundation legislation will also provide that persons who were deported from their homelands into the territory of the 1937 borders of the German Reich or to a German-occupied area, and were held in prison-like or extremely harsh living conditions ("forced laborers") not covered by the above definition will be eligible to receive up to DM 5,000 each. In addition, from the allocated funds to make payments to forced laborers, partner organizations will be authorized to make payments to others who were forced to work during the National Socialist era. These other forced laborers will receive up to DM 5,000 each. The eligibility of all laborers covered by the Foundation will be limited to survivors and heirs, as defined under paragraph 8, of those who died after February 15, 1999. In addition, victims of "other non-labor personal injury

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wrongs," including, but not limited to, medical experimentation and Kinderheim cases, will be eligible to receive payments, within the limits of the amount allocated for that purpose. Victims of medical experimentation and Kinderheim cases are given priority over other non-labor personal injury wrongs. The eligibility of a victim to receive benefits for all "other non-labor personal injury wrongs" will not be affected by whether or not he or she also receives benefits for forced labor. The funds allocated for "other non-labor personal injury wrongs" will constitute a separate allocation. The partner organizations will receive, review, and process applications for payments from the amount allocated for "other personal injury." At the request of a partner organization, the property committee referred to in paragraph 11 will appoint an independent arbitrator to review and process applications to the particular partner organization. The amount allocated will be distributed to each partner organization so that each approved applicant is provided a prorata amount of the total amount for all approved "other personal injury" applicants. The decisions of the partner organizations and any arbitrator that may be appointed will be based on uniform standards approved by the Board of Trustees. The Foundation legislation will provide that any costs associated with reviewing and processing applications, including those associated with an arbitrator (if selected), will be drawn from the allocations for each partner organization. Excess amounts in the labor category allocated to any partner organization under the distribution plan annexed to the Joint Statement will be reallocated to labor, with the aim of reaching equal levels of payments to former slave and forced laborers wherever they reside. The Board of Trustees will be entitled to authorize payments above per capita ceilings should circumstances warrant.

5. The Foundation legislation will provide that a slave or forced laborer will not be able to receive payments for the same injury or wrong from both the Foundation and the Austrian Foundation for Reconciliation, Peace and Cooperation.

6. The Foundation legislation will provide that persons who suffered loss of or damage to property during the National Socialist era as a result of racial persecution directly caused by German companies are eligible to recover under the payment system set forth in paragraph 11. The eligibility of such persons will be limited to those who could not receive any payment under the BEG or Federal Restitution Law ("BRueckG") because they did not meet the residency requirement or could not file their claims by the deadline because they lived under a government with which the Federal Republic of Germany did not have diplomatic relations, those whose claims were rejected under the BEG or BRueckG where legal proof became available only after the reunification of the Federal Republic of Germany, provided the claims were not covered by post-reunification restitution or compensation legislation, and those whose racially-motivated property claims concerning moveable property were denied or would have been denied under the BEG or BRueckG because the claimant, while able to prove a German company was responsible for seizing or confiscating property, was not able to prove that the property was transferred into then-West Germany (as required by law) or, in the case of bank accounts, that compensation was or would have been denied because the sum was no longer identifiable, where either (a) the claimant can now prove the property was transferred into then-West Germany or (b) the location of property is unknown.

7. The Foundation legislation, by making available the amount of 50 million DM, will provide a potential remedy for all non-racially motivated wrongs of German companies di-

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rectly resulting in loss of or damage to property during the National Socialist era. The Foundation will refer such matters for review and processing to the committee referred to in paragraph 11. All funds allocated to payment for property matters will be distributed within those categories.

8. The Foundation legislation will provide that the heirs eligible to receive payments under paragraphs 6 and 7 consist of the spouse or children. In the absence of the victim, spouse and children, then payments under these paragraphs will be available to grandchildren, if alive; if not, to siblings, if alive; and if there are neither grandchildren nor siblings, to the individual beneficiary named in a will.

9. The Foundation legislation will provide that all eligibility decisions will be based on relaxed standards of proof.

10. The Foundation legislation will provide that legal persons will be allowed to make claims on behalf of individuals when those individuals have given powers of attorney. The Foundation legislation will also provide that where an identifiable religious community has suffered damage to or loss of community property, as distinct from individual property, resulting directly from the wrongs of a German company, a duly authorized legal successor may apply for payment to the committee referred to in paragraph 11.

11. The Foundation legislation will establish a three-member committee for property matters (paragraphs 6 and 7). The United States and the Federal Republic of Germany will each appoint one member; these two members will appoint a Chairman. A secretariat will be largely responsible for the initial review of applications. The Foundation legislation will require the Committee to establish simplified procedures, including simplified and expedited internal appeals. The Committee will not have the authority to reopen any case that has been finally decided by a German court or administrative body, or that could have been decided by application in time, except as specified in paragraph 6. All of the Committee's expenses will be funded from the amount allocated for property claims and the funds will be subject to audit.

12. The Foundation legislation will provide that the Committee referred to in paragraph 11 will distribute the funds allocated to it on a pro-rata basis.

13. The Foundation legislation will make clear that receipt of payment from Foundation funds will not affect the recipient's eligibility for social security or other public benefits. There will be offsets for prior compensation payments made by German companies for forced labor and other National Socialist era injustices, even if made through third parties, but there will be no offsets for any prior Government payments.

14. The Foundation legislation will provide that each applicant for a Foundation payment will be required to state that, upon receipt of a payment from the Foundation, he or she will waive any and all alleged National Socialist era claims against German companies and all National Socialist era labor and property damage claims against the German Government. Such a waiver will not preclude applicants from being eligible to receive payments under the Foundation legislation for other wrongs, for example other personal injuries or loss of property, or any combination thereof. Such a waiver also will not preclude an applicant from bringing an action against a specific German entity (i.e., Government agency or company) for the return of a specifically identified piece of art if the action is filed in the Federal Republic of Germany or in the country in which the art was taken,

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provided that the applicant is precluded from seeking any relief beyond or other than the return of the specifically identified piece of art.

15. The Foundation legislation will provide that each partner organization will create an internal appeals procedure.

16. The Foundation legislation will require that the Foundation provide appropriately extensive publicity concerning the benefits that the Foundation will offer and how to apply. The Board of Trustees, in consultation with the partner organizations, will determine the form and content of such publicity.

17. The Foundation legislation will allow applications to be made to the partner organizations for at least eight months after the enactment of the Foundation law.

18. The Foundation legislation will authorize the Foundation and its partner organizations to receive information from German Government agencies and other public bodies that is necessary for the fulfillment of their responsibilities, in so far as this is not contrary to particular statutes or regulations or the legitimate interests of the persons concerned.

19. The Foundation legislation will enter into force no later than when the funds of the Foundation are made available to it.

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ANNEX B OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND THE FUTURE"

Elements of U.S. Government Statement of Interest

Pursuant to Article 2, Paragraph 1, the United States will timely file a Statement of Interest and accompanying formal foreign policy statement of the Secretary of State and Declaration of Deputy Treasury Secretary Stuart E. Eizenstat in all pending and future cases, regardless of whether the plaintiff(s) consent(s) to dismissal, in which the United States is notified that a claim has been asserted against German companies arising from the National Socialist era and World War II.

The Statement of Interest will make the following points:

1. As indicated by his letter of December 13, 1999, the President of the United States has concluded that it would be in the foreign policy interests of the United States for the Foundation to be the exclusive forum and remedy for the resolution of all asserted claims against German companies arising from their involvement in the National Socialist era and World War II, including without limitation those relating to slave and forced labor, aryанизation, medical experimentation, children's homes/Kinderheim, other cases of personal injury, and damage to or loss of property, including banking assets and insurance policies.

2. Accordingly, the United States believes that all asserted claims should be pursued (or in the event Foundation funds have been exhausted, should timely have been pursued) through the Foundation instead of the courts.

3. As the President said in his letter of December 13, 1999, dismissal of the lawsuit, which touches on the foreign policy interests of the United States, would be in the foreign policy interests of the United States. The United States will recommend dismissal on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine). The United States will explain that, in the context of the Foundation, it is in the enduring and high interest of the United States to support efforts to achieve dismissal of all National Socialist and World War II era cases against German companies. The United States will explain fully its foreign policy interests in achieving dismissal, as set forth below.

4. The United States' interests include the interest in a fair and prompt resolution of the issues involved in these lawsuits to bring some measure of justice to the victims of the National Socialist era and World War II in their lifetimes; the interest in the furtherance of the close cooperation this country has with our important European ally and economic partner, Germany; the interest in maintaining good relations with Israel and other Western, Central, and Eastern European nations, from which many of those who suffered during the National Socialist era and World War II come, and the interest in achieving legal peace for asserted claims against German companies arising from their involvement in the National Socialist era and World War II.

5. The Foundation is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Holocaust and victims of National Socialist persecution. It com-

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plements significant prior German compensation, restitution, and pension programs for acts arising out of the National Socialist era and World War II. For the last 55 years, the United States has sought to work with Germany to address the consequences of the National Socialist era and World War II through political and governmental acts between the United States and Germany.

6. The participation in the Foundation not only by the German Government and German companies that existed during the National Socialist era, but also by German companies that did not exist during the National Socialist era, allows comprehensive coverage of slave and forced laborers and other victims.

7. Plaintiffs in these cases face numerous legal hurdles, including, without limitation, justiciability, international comity, statutes of limitation, jurisdictional issues, *forum non conveniens*, difficulties of proof, and certification of a class of heirs. The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal, but will reinforce the point that U.S. policy interests favor dismissal on any valid legal ground.

8. The Foundation is fair and equitable, based on: (a) the advancing age of the plaintiffs, their need for a speedy, non-bureaucratic resolution, and the desirability of expending available funds on victims rather than litigation; (b) the Foundation's level of funding, allocation of its funds, payment system, and eligibility criteria; (c) the difficult legal hurdles faced by plaintiffs and the uncertainty of their litigation prospects; and (d) in light of the particular difficulties presented by the asserted claims of heirs, the programs to benefit heirs and others in the Future Fund.

9. The structure and operation of the Foundation will assure (or has assured) swift, impartial, dignified, and enforceable payments; appropriately extensive publicity has been given concerning its existence, its objectives, and the availability of funds; and the Foundation's operation is open and accountable.

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ANNEX C OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND THE FUTURE"

Definition of "German Companies"

"German companies," as used in Article 1 (1) and Article 2(1), are defined as in Sections 12 and 16 of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," as follows:

1. Enterprises that had their headquarters within the 1937 borders of the German Reich or that have their headquarters in the Federal Republic of Germany, as well as their parent companies, even when the latter had or have their headquarters abroad.
2. Enterprises situated outside the 1937 borders of the German Reich in which during the period between January 30, 1933, and the entry into force of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," German enterprises as described in Sentence (1) had a direct or indirect financial participation of at least 25 percent.
3. "German companies" does not include foreign parent companies with headquarters outside the 1937 borders of the German Reich in any case in which the sole alleged claim arising from National Socialist injustice or World War II has no connection with the German affiliate and the latter's involvement in National Socialist injustice, unless there is pending a discovery request by plaintiff(s), of which the United States is provided notice by the defendant with copy to plaintiff(s), seeking discovery from or concerning World War II or National Socialist era actions of the German affiliate.

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**JOINT STATEMENT ON OCCASION OF THE FINAL PLENARY MEETING
CONCLUDING INTERNATIONAL TALKS ON THE PREPARATION OF
THE FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND THE
FUTURE"**

The Governments of the Republic of Belarus, the Czech Republic, the State of Israel, the Republic of Poland, the Russian Federation and Ukraine,

The Governments of the Federal Republic of Germany and the United States of America,

The German companies that founded the initiative to establish a foundation, which have since been joined by thousands of other German companies, and

As further participants, the Conference on Jewish Material Claims Against Germany, Inc. and the undersigned attorneys,

Recalling the proposal presented to the Chancellor of the Federal Republic of Germany by German companies on February 16, 1999, to send, as the century draws to a close, "a conclusive humanitarian signal, out of a sense of moral responsibility, solidarity and self-respect,"

Acknowledging the intention of both the Government of the Federal Republic of Germany and German companies to accept moral and historical responsibility arising from the use of slave and forced laborers, from property damage suffered as a consequence of racial persecution and from other injustices of the National Socialist era and World War II,

Recalling with appreciation the December 17, 1999, statement of the President of the Federal Republic of Germany paying tribute to those who were subjected to slave and forced labor under German rule, recognizing their suffering and the injustices done to them, and begging forgiveness in the name of the German people,

Affirming the consensus reached by all participants on December 17, 1999, at the 7th plenary meeting in Berlin on the establishment of the Foundation "Remembrance, Responsibility and the Future,"

Understanding that the Foundation is a sign of solidarity with the victims living in Central and Eastern European states and also a means of providing funds for victims from Central and Eastern Europe, most of whom benefited little from prior German compensation and restitution programs,

Understanding that insofar as the sum of 10 billion DM to be made available by the German public sector and the German companies for the Foundation "Remembrance, Responsibility and the Future" is concerned, that sum is both a ceiling and the final amount and that all payments made towards former National Socialist slave and forced laborers, for other personal injury, for damage to property and for the Future Fund envisaged as part of the Foundation, as well as other costs incurred in connection with the Foundation, shall be financed from this sum, from any contributions from others, and the interest thereon,

Understanding that additional contributions by others for use by the Foundation are welcomed,

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Recognizing that the Foundation will provide dignified payments to hundreds of thousands of survivors and to others who suffered from wrongs during the National Socialist era and World War II,

Accepting the common objective that German companies (including parents and subsidiaries as defined in Annex A) receive all embracing and enduring legal peace,

Recognizing that it would be in the participants' interests for the Foundation to be the exclusive remedy and forum for the resolution of all claims that have been or may be asserted against German companies arising out of the National Socialist era and World War II,

Recognizing that the establishment of the Foundation does not create a basis for claims against the Federal Republic of Germany or its nationals.

Declare as follows:

1. All participants welcome and support the Foundation "Remembrance, Responsibility and the Future" and declare their agreement with its elements, including the annexed distribution plan (Annex B). The interests of the former forced laborers, other victims and heirs have been duly taken into account. Based on the circumstances, all participants consider the overall result and the distribution of the Foundation funds to be fair to the victims and their heirs. The Foundation opens up the prospect of payment being made, even if, 55 years after the end of the war, the wrongdoer can no longer be traced or is no longer in existence. The Foundation is also a means of providing funds for forced laborers in addition to payments made by Germany so far.

2. Given the advanced age of the victims concerned, the primary humanitarian objective of the Foundation "Remembrance, Responsibility and the Future" is to show results as soon as possible. All participants will work together with the Foundation in a cooperative, fair and non-bureaucratic manner to ensure that the payments reach the victims quickly.

3. Payments are to be made to applicants on behalf of the Foundation "Remembrance, Responsibility and the Future" irrespective of their race, religion and nationality. Insofar as the participants themselves distribute funds, they will base their decisions on the criteria of eligibility set out in the German law establishing the Foundation and will act justly in this regard.

4. The participating Governments and other participants will proceed as follows:

a) The Government of the Federal Republic of Germany ("Germany") and the German companies shall each contribute DM 5 billion to the Foundation "Remembrance, Responsibility and the Future."

b) Germany and the Government of the United States of America ("United States") will sign an Executive Agreement. Such agreement contains the obligation undertaken by the United States to assist in achieving all-embracing and enduring legal peace for German companies.

c) The Governments of the participating Central and Eastern European States and Israel will implement the necessary specific measures within the framework of their national legal systems to achieve all-embracing and enduring legal peace.

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d) Assuming the request for a transfer referred to in paragraph (e) is granted, the DM 5 billion contribution of German companies shall be due and payable to the Foundation and payments from the Foundation shall begin once all lawsuits against German companies arising out of the National Socialist era and World War II pending in U.S. courts including those listed in Annex C and D are finally dismissed with prejudice by the courts. The initial portion of the DM 5 billion German Government contribution will be made available to the Foundation by October 31, 2000. The remainder of the German Government contribution will be made available to the Federal Foundation by December 31, 2000. Contributions from the German Government will begin earning interest for the benefit of the Foundation immediately upon being made available to the Foundation. The German Government may advance some of its contribution to the partner organizations for certain start-up costs before the lawsuits are finally dismissed. The German companies will make available reasonable advanced funding to provide appropriate publicity of the upcoming availability of Foundation benefits. German company funds will continue to be collected on a schedule and in a manner that will ensure that the interest earned thereon before and after their delivery to the Foundation will reach at least 100 million DM.

e) Counsel for German company defendants and counsel for plaintiffs (each seeking to assemble at least a substantial majority of defendants' and plaintiffs' counsel respectively) have filed requests with the Multidistrict Litigation Panel seeking a transfer under appropriate conditions to a mutually agreeable federal judge of the federal district court cases listed in Annexes C and D, for the purpose of implementing the other steps in this Joint Statement and in order to facilitate carrying out the objectives of the Executive Agreement by dismissing with prejudice the transferred cases and any later filed cases thereafter to be transferred as "tag-along" cases.

f) Germany will immediately establish a preparatory committee for the Foundation. The preparatory committee, after consulting with victims' representatives, will provide the publicity envisaged in paragraph (d) prior to the formal establishment of the Foundation, and, in consultation with partner organizations, prepare for the collection of applications for payment by the partner organizations.

g) The counsel for the plaintiffs will file motions or stipulations to dismiss with prejudice all lawsuits they have filed currently pending in U.S. courts against German companies arising out of the National Socialist era and World War II, including those listed in Annex C. They will also cooperate in seeking dismissal with prejudice by the courts of all other such lawsuits, including those listed in Annex D.

h) Germany and the United States will bring into force the Executive Agreement and the United States will thereupon file the Statement of Interest as provided therein.

i) The German Government will encourage German companies to open their archives relating to the National Socialist era and World War II.

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Done at Berlin on the seventeenth day of July of the year Two Thousand in a single original, copies of which will be made available to interested parties.

For the Government of the Republic of Belarus

For the Government of the Czech Republic

For the Government of the State of Israel

For the Government of the Republic of Poland

For the Government of the Russian Federation

For the Government of Ukraine

For the Government of the United States of America

For the Government of the Federal Republic of Germany

For the Foundation Initiative of German Enterprises

For the Conference on Jewish Material Claims Against Germany, Inc.

LINDA GERSTEL

LAWRENCE KILL

For Anderson, Kill & Olick, P.C.

EDWARD W. MILLSTEIN

STEPHEN A. WHINSTON

For Berger and Montague, P.C.

IRWIN B. LEVIN

RICHARD E. SHEVITZ

For Cohen & Malad, P.C.

MICHAEL D. HAUSFELD

For Cohen, Milstein, Hausfeld & Toll, P.L.L.C.

EDWARD FAGAN

For Fagan & Associates

CAREY D'AVINO

BARRY FISHER

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For Fleishman & Fisher

DENNIS SHEILS

ROBERT SWIFT

for Kohn, Swift & Graf, P.C.

MORRIS A. RATNER

For Lieff, Cabraser, Heimann & Bernstein, L.L.P.

MARTIN MENDELSON

For Verner, Liipfert, Bernhard, Mc Pherson and Hand

DEBORAH M. STURMAN

MELVYN I. WEISS FOR

For Milberg, Weiss, Bershad, Hynes & Lerach, L.L.P.

J. DENNIS FAUCHER

For Miller, Faucher, Cafferty & Wexler, L.L.P.

BURT NEUBORNE

New York University School of Law

MYROSLAW SMORODSKY

MELVYN URBACH

STANLEY M. CHESLEY

For Waite, Schneider, Bayles & Chesley

MICHAEL WITTI

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ANNEX A TO THE JOINT STATEMENT ON OCCASION OF THE FINAL PLENARY
MEETING CONCLUDING INTERNATIONAL TALKS ON THE PREPARATION
OF THE FEDERAL FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND
THE FUTURE" DONE AT BERLIN, 17 JULY 2000

Definition of "German Companies"

"German companies" are defined as in Sections 12 and 16 of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," as follows:

1. Enterprises that had their headquarters within the 1937 borders of the German Reich or that have their headquarters in the Federal Republic of Germany, as well as their parent companies, even when the latter had or have their headquarters abroad.
2. Enterprises situated outside the 1937 borders of the German Reich in which during the period between January 30, 1933, and the entry into force of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," German enterprises as described in Sentence (1) had a direct or indirect financial participation of at least 25 percent.
3. "German companies" does not include foreign parent companies with headquarters outside the 1937 borders of the German Reich in any case in which the sole alleged claim arising from National Socialist injustice or World War II has no connection with the German affiliate and the latter's involvement in National Socialist injustice, unless there is pending a discovery request by plaintiff(s), of which the United States is provided notice by the defendant with copy to plaintiff(s), seeking discovery from or concerning World War II or National Socialist era actions of the German affiliate.

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ANNEX B

to the

Joint Statement
 on occasion of the final plenary meeting concluding international talks on the preparation of
 the Federal Foundation "Remembrance, Responsibility and the Future,"
 done at Berlin, 17 July 2000

Joint Chairman's Proposal

	Subsidization Amount (Billion DM)	Amount (Billion DM)	Percentage of Amount for Labor	Overall Percentage	Supplemental Funds (Billion DM)	Suballocation Amount with Supplemental Funds* (Billion DM)	Percentage of Amount for Labour with Supplemental Funds	Supplemental Funds Comments	Swiss Fund
1. ALMK	3.630 DM	3.630 DM			0.100 DM	0.100 DM			
Slave Labor	4.420 DM								
Forced Labor		8.050 DM	80.50 %						
Capital for Slave and Forced Labor Suballocations (Slave and Forced Labor Combined)									
Partner Organizations ¹ :									
Claims Committee ²	1.812 DM		22.31 %		0.050 DM	1.812 DM	22.31 %	Interest Earned in CEEs	
Poland	1.798 DM		22.31 %			1.812 DM	22.37 %		
Ukraine	1.789 DM		21.22 %			1.724 DM	21.29 %		
Russia Federation	0.238 DM		10.28 %			0.035 DM	10.31 %		
Republic of Belarus	0.087 DM		6.54 %			0.054 DM	8.56 %		
Rest of Eastern Europe & Rest of World (incl. Saudi and Russia) ³	0.419 DM		5.21 %			0.423 DM	5.22 %		
Other Personal Injury Cases	0.100 DM		9.94 %			0.000 DM	9.88 %		
		0.050 DM	0.50 %						

¹ Amounts for each country foundation (Republic of Poland, Ukraine, Russian Federation, Republic of Belarus and Czech Republic) calculated using the same proportions (in percentages) as in January 31 CEE proposal.

² Amounts reflect reallocation of supplemental funds.

³ Amount includes payments to 170,000 slave laborers.

⁴ Includes up to 260 Mts. DM to be distributed by the 'Joint Conference to Jewish Slave and forced laborers.'

*Other Personal Injury Cases (e.g. medical experimentation and other cases).

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TOTAL CAPITAL FOR LABOR	8,100 DM	81.00 %	8,250 DM
TOTAL CAPITAL FOR NON- LABOR	1,000 DM	10.00 %	
Working Claims	0,150 DM		
(Other Property) "Bank-Air"	0,050 DM		
Banking (Lunomatization)	0,300 DM		
Insurance Claims ^a	0,150 DM		0,050 DM
Insurance (Insurance Law) KfW ^b	0,350 DM		
FUTURE FUND	0,700 DM	7.00 %	
Programs As-Used			
Reserve for Insurance Claims ^c	0,100 DM		
ADMINISTRATION	0,200 DM	2.00 %	
TOTAL CAPITAL FOR NON- LABOR, FUTURE FUND AND ADMINISTRATION			
	1,900 DM		1,950 DM
TOTAL FOUNDATION CAPITAL	10,000 DM	100 %	

^a "Catch-all" (premises, claims not otherwise covered).^b Includes KfW's administrative expenses. Insurance claims in excess of DM 150 million allocation to be paid from interest earned (DM 50 million). Insurance claims in excess of DM 200 million to be paid from Future Fund reserve of DM 100 million.^c 10 % (fifithousand) of Future Fund to be for programs for rents.^d Reserve for Insurance claims, in the event that actual claims exceed DM 200 million.

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**ANNEX C TO THE JOINT STATEMENT ON OCCASION OF THE FINAL PLENARY
MEETING CONCLUDING INTERNATIONAL TALKS ON THE PREPARATION
OF THE FEDERAL FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND
THE FUTURE" DONE AT BERLIN, 17 JULY 2000**

List of known World War II and National Socialist era cases against German companies pending in U.S. courts filed by plaintiffs' counsel participating in the negotiations

[Not published herein]

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**ANNEX D TO THE JOINT STATEMENT ON OCCASION OF THE FINAL PLENARY
MEETING CONCLUDING INTERNATIONAL TALKS ON THE PREPARATION
OF THE FEDERAL FOUNDATION "REMEMBRANCE, RESPONSIBILITY AND
THE FUTURE" DONE AT BERLIN, 17 JULY 2000**

List of known World War II and National Socialist era cases against German companies pending in U.S. courts filed by plaintiffs' counsel not participating in the negotiations

[Not published herein]

Exhibit 6

Declaration of Under Secretary of State William J. Burns Regarding Austria

DECLARATION BY UNDER SECRETARY OF STATE WILLIAM J. BURNS

I, William J. Burns, hereby declare and state as follows:

1. I am the Under Secretary of State for Political Affairs, a position I have held since May 2008. Prior to my current position, I have served in a number of posts since entering the Foreign Service in 1982, including, among others: Ambassador to Russia, Assistant Secretary of State for Near Eastern Affairs, and Ambassador to Jordan.
2. The United States and Austria signed an Executive Agreement on October 24, 2000, in which Austria committed to establish a fund to compensate victims of Nazi-era forced and slave labor (the “Reconciliation Fund”), and the United States committed to take certain steps to assist Austria and Austrian Companies in achieving “legal peace” in the United States with respect to such claims. In a January 23, 2001 Exchange of Notes, constituting an Executive Agreement between the United States and Austrian Governments, Austria committed to establish a broader General Settlement Fund (“GSF”) to redress all claims against Austria arising out of the National Socialist Era and World War II—excluding only *in rem* claims for art restitution and those covered by the Reconciliation Fund—and the United States undertook to extend its efforts to support “legal peace” for Austria and Austrian Companies to all such claims. The background of these efforts and a statement of U.S. foreign policy interests in the implementation of the Agreements are stated in the January 19, 2001 declaration of former Deputy Secretary of Treasury Stuart Eizenstat, and the January 19, 2001 statement of former Secretary of State Madeleine Albright (attached).
3. The foreign policy interests in “legal peace” for covered companies described by Secretary Albright and Deputy Secretary Eizenstat are enduring and extend beyond Austria’s

successful implementation of the Agreements. The United States' efforts to facilitate these cooperative compensation arrangements is part of a larger policy to ensure the greatest compensation for the greatest number of Holocaust victims and their heirs, in their lifetimes, as well as to support a broad "legal peace" for countries and companies subject to ongoing claims.

I declare under penalty of perjury that the foregoing is true and correct.

Dated 2/7/2011



William J. Burns
Under Secretary of State for Political Affairs

Exhibit 7

Declaration of Stuart Eizenstat Regarding Austria

DECLARATION OF STUART E. EIZENSTAT

I, Stuart E. Eizenstat, hereby declare and state as follows:

1. I am currently the Deputy Secretary of the Treasury, as well as the Special Representative of the President and the Secretary of State on Holocaust Issues, positions I have held since July 1999. Prior to my current position, I served as Under Secretary of State for Economic Affairs, and before that as Under Secretary of Commerce and as U.S. Ambassador to the European Union. Since 1995, I have been the Secretary of State's Special Envoy on Property Restitution in Central and Eastern Europe.

2. A number of lawsuits have been filed in recent years on behalf of Holocaust survivors, other victims of the Nazi era, and their heirs to recover, among other things, looted property, compensation for slave and forced labor, proceeds of unpaid insurance policies, and assets deposited in dormant or confiscated bank accounts.

3. As a matter of policy, the United States Government believes that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation, rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation. This is because the U.S. supports efforts to bring some measure of justice to these victims in their lifetimes, and because the U.S. believes that available funds should be spent on the victims and not on litigation, and, importantly, also because the number of victims who can be covered by a negotiated settlement is often greater than can be achieved through litigation. Much of my work over the past five years has been devoted to effectuating this policy.

4. Most recently, and most relevant to this litigation, I led an inter-agency United States Government team in negotiations resulting in the creation of a fund to make payments to

victims of Austrian companies and the Nazi regime on the territory of the present-day Republic of Austria during the Nazi era and World War II. This declaration sets forth the history of those negotiations and the basis upon which the United States Government has concluded that it would be in its foreign policy interest for that fund to be the exclusive remedy and forum for all claims against Austria and/or Austrian companies arising out of or relating to the Nazi era and World War II (and any other claims covered by the fund), including those raised in this litigation, but excluding claims for in rem restitution of works of art, as well as claims for Nazi-era forced or slave labor and all other claims covered by the Austrian Fund "Reconciliation, Peace and Cooperation" ("Reconciliation Fund").

Background of Austrian Property/Aryanization Negotiations

5. In February 2000, I was asked by the Austrian Federal Government to help facilitate a resolution of class action lawsuits filed in U.S. courts arising from slave and forced labor and other wrongs during the Nazi era. During the subsequent nine months, I co-chaired a series of formal and informal discussions between lawyers representing the victims and the Austrian Federal Government on a proposed initiative to establish a fund to make payments to victims of slave and forced labor (and certain others) during World War II and the Nazi era. The parties' intent was to model this fund on the German Foundation, "Remembrance, Responsibility, and the Future," which the German Government had created after a year and a half of negotiations, which I also co-chaired, among victims' representatives, lawyers for German companies, and the German Government.

6. The parties to these negotiations anticipated that at the conclusion of an agreement concerning the establishment of a fund for Nazi-era forced and slave laborers who worked on the

territory of the present-day Republic of Austria, the parties would commence negotiations concerning the establishment of a similar fund for those who suffered from aryanization, theft, or destruction of property on the territory of the present-day Republic of Austria during this same time period.

7. In early October 2000, as a pre-condition demanded by the victims' representatives to concluding an agreement concerning forced and slave labor claims against Austria and/or Austrian companies, Austria committed \$150 million to cover certain property claims. Specifically, this \$150 million will be paid on an expedited, per-capita basis to survivors of the Holocaust originating from or living in Austria for claims for apartment and small business leases, household property, and personal effects, excluding *in rem* claims for works of art and potential claims against the Dorotheum.¹ Austria's commitment with regard to these claims is set forth in the Framework Concerning Austrian Negotiations Regarding Austrian Nazi Era Property/Aryanization Issues ("Framework Agreement").

8. On October 24, 2000, the parties to the negotiations gathered in Vienna to sign a Joint Statement concluding the negotiations, and expressing their support for the Reconciliation Fund as the exclusive remedy for all Nazi-era forced and slave labor claims against Austria and/or Austrian companies on the territory of the present-day Republic of Austria. Simultaneously, the United States and Austria signed an Executive Agreement, in which Austria committed that the operation of the Reconciliation Fund would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain steps to assist

¹ The Dorotheum is an auction house in Vienna through which property aryanized during the National Socialist Era and World War II was sold.

Austria and Austrian companies in achieving "legal peace" in the United States with respect to forced and slave labor claims arising out of the Nazi era and World War II (and any other claims covered by the Reconciliation Fund). The Executive Agreement entered into force by exchange of notes on December 1, 2000.

9. After being publically announced earlier that day by the Chancellor of Austria, Wolfgang Schuessel, negotiations commenced in Vienna during the evening of October 24, 2000, concerning the creation of a General Settlement Fund ("GSF") to address all property/aryanization claims against Austria and/or Austrian companies arising out of the Nazi era and World War II, and all other Nazi-era claims against Austria and/or Austrian companies not covered by the Reconciliation Fund. I co-chaired these negotiations with Ambassador Ernst Sucharipa. The participants in these negotiations included the United States, the Austrian Federal Government, Austrian companies, and representatives of the victims, including the Conference on Jewish Material Claims, a non-governmental organization created to negotiate for and administer compensation for Nazi crimes to Jewish people around the world.² Through these participants and the numerous plaintiffs' attorneys, the victims' interests were broadly and vigorously represented.

10. In January 2001, the plaintiffs' attorneys, Austria, and Austrian companies agreed on two key points: that the Austrian Federal Government and Austrian companies would

² The Conference on Jewish Material Claims against Germany ("CJMC") is an umbrella organization under which various Jewish groups and organizations of Holocaust survivors are represented. Among the participating groups and organizations are the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, B'nai B'rith International, the Centre of Organizations of Holocaust Survivors in Israel, and the World Jewish Congress.

establish a fund, capitalized by \$ 360 million to make payments for all claims against Austria and/or Austrian companies arising out of or relating to the National Socialist Era or World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund, and that, in exchange, the plaintiffs would voluntarily dismiss all such claims filed in U.S. courts. The United States Government further pledged to support this effort by filing a Statement of Interest indicating its own foreign policy interests in assisting Holocaust victims on an expedited basis, and in helping achieve legal peace for Austria and Austrian companies with respect to Nazi-era property/aryanization claims (and any other claims covered by the GSF) in U.S. courts.

11. The parties agreed on eligibility requirements and other procedures to govern the GSF's operation. The parties also came to agreement on levels of capital distribution among and evidentiary standards for different varieties of property/aryanization claims.

12. The negotiations to reach these agreements, like the negotiations to reach agreement concerning the Austrian Fund "Reconciliation, Peace and Cooperation" concerning Nazi-era forced and slave laborers who worked on the territory of the present-day Republic of Austria, were very difficult, complex, and emotional.

13. On January 17, 2001, the parties to the negotiations gathered in Washington to sign a Joint Statement concluding the negotiations, and expressing their support for the GSF as the exclusive remedy for all claims arising against Austria and/or Austrian companies arising out of or relating to the National Socialist Era or World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund.

14. The agreement among the parties will take effect when the United States and Austria exchange diplomatic notes expressing Austria's commitment that the operation of the GSF will be governed by principles the parties agreed upon during the negotiations, including the Austrian Federal Government's obligation to propose legislation establishing the GSF (including a Claims Committee and an *in rem* Arbitration Panel) and to amend various social benefits laws, and the United States' commitment to take certain steps to assist Austria and Austrian companies in achieving "legal peace" in the United States with respect to all claims against Austria and/or Austrian companies arising out of or relating to the National Socialist Era and World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund.

15. The role played by the United States in this negotiation, like the role it played in the negotiation leading to the creation of the Austrian Fund "Reconciliation, Peace and Cooperation" and the German Foundation "Remembrance, Responsibility, and the Future," was unique. The agreement negotiated is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its nationals or anyone else. Instead, the intent of our participation was to bring together the victims' constituencies on one side and the Austrian Federal Government and Austrian companies on the other, to bring expeditious justice to the widest possible population of survivors and heirs, and to help facilitate legal peace with respect to Nazi-era property/aryanization claims against Austria and/or Austrian companies, and any other claims not covered by the Reconciliation Fund, excluding claims for *in rem* restitution for works of art. Among these parties, the United States facilitated the essential arrangement by which the Austrian side would establish a \$360 million fund to address all Nazi-

era claims against Austria and/or Austrian companies, with the exception of those claims covered by the Reconciliation Fund and claims for the *in rem* restitution of works of art, and the class action representatives in pending United States litigation agreed to give up their Nazi-era property/aryanization claims against Austria and/or Austrian companies (and any other claims covered by the GSF); by voluntary dismissals with respect to such claims in United States courts. The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the GSF being treated as the exclusive remedy for all claims against Austria and/or Austrian companies arising out of or relating to the National Socialist Era or World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund, and, concomitantly, in such claims being dismissed.

The GSF

16. Pursuant to the Exchange of Notes between the United States and the Federal Republic of Austria, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001, to establish the GSF. Austria will undertake its best efforts to ensure that the legislation is passed by June 30, 2001.

17. The GSF is intended to benefit victims of Nazi-era persecution, including heirs and victims' communal organizations, and will be capitalized with \$ 210 million, plus interest accruing over a period to begin 30 days after all claims filed as of June 30, 2001, have been dismissed and continuing until the capital of the GSF has been exhausted on approved claims.

18. The GSF legislation will establish an independent three-member Claims Committee (the "Committee") for all Nazi-era claims against Austria and/or Austrian companies,

including claims against defunct companies and companies not subject to jurisdiction in U.S. courts, but excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund. The United States and Austria will each appoint one member of the Committee; these two members will then appoint a Chairperson.

19. The GSF legislation will provide that 50% of the funds allocated for distribution from the GSF will be reserved for a “claims-based” process and 50% of such funds will be reserved for an “equity-based” process. The GSF will distribute the funds allocated for the “claims-based” process on a pro-rata basis and the funds allocated for the “equity-based” process on a per-household basis.³ A claimant may submit an application to the Committee either under the “claims-based” process (which claim may include multiple properties) or under the “equity-based” process. If an entire claim is rejected under the “claims-based” process, a claimant may submit an application under the “equity-based” process. Claims under both the “claims-based” and the “equity-based” processes may be made for 24 months following the entry into force of the GSF law.

20. The GSF legislation will require the Committee to establish simplified procedures. The Committee will review all applications using relaxed standards of proof, and will make all decisions on a majority basis, except those concerning the reopening of cases that have been finally decided by an Austrian court or administrative body under Austrian restitution legislation or that have been settled after 1945, in which cases the Committee may award

³ Household on the present-day territory of the Republic of Austria between March 12, 1938, and May 9, 1938.

payments only where the Committee unanimously determines that such decision or settlement constituted extreme injustice.

21. Under the “claims-based” process, the Committee may receive claims for the following categories of property: (i) liquidated business, including licenses and other business assets; (ii) real property; (iii) bank accounts, stocks, bonds, and mortgages; (iv) moveable property not covered by the \$ 150 million referred to *supra* ¶ 7; and (v) insurance policies. Under the “claims-based process,” the Committee may award a payment of no more than \$ 2 million for any approved claim. The GSF will establish simplified and expedited internal appeals for decisions made under the “claims-based” process.

22. Under the “equity-based” process, the Committee will make per-household payments for the categories of property covered by the “claims-based” process (using even more relaxed standards of proof than the “claims-based” process) or any Nazi-era claims not covered by the Reconciliation Fund or the Arbitration Panel, *infra* ¶ 24. The Committee will award no more than one “equity-based” payment per household.

23. The GSF legislation will provide that the Committee will evaluate insurance claims under the claims-handling procedures of the International Commission on Holocaust Era Insurance Claims (“ICHEIC”). Insurance claims will be paid on a pro-rata basis. The Austrian Insurance Association will make lists of Holocaust-era policy holders publicly accessible. An amount of \$25 million will be allocated for payment of insurance claims out of the GSF. In the event that the Committee exhausts the \$25 million allocated for insurance claims and additional claims are outstanding, the Committee may use an additional amount up to \$5 million from the “claims-based” process to pay insurance claims.

24. In connection with the establishment of the GSF, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001, to establish, fund, and authorize a three-member Arbitration Panel ("Panel") to consider, on a case-by-case basis, the *in rem* return of publicly-owned property, including property formerly owned by Jewish communal organizations. The United States, with prior consultation with the victims' representatives, and Austria will each appoint one member; these two members will appoint a Chairperson. Potential claimants for *in rem* restitution of publicly-owned property include survivors, heirs, and victims' communal organizations. The Panel will make recommendations to the competent Austrian Federal Minister for *in rem* restitution. The United States and Austrian Federal Government will consult on a regular basis concerning the implementation of the Panel recommendations. Where *in rem* restitution, although merited, is not practical, the Panel may make recommendations that the claimant be awarded a comparable property. The Panel will make its recommendations within six months of receiving any claim. The Panel legislation will allow applications to be made to the Panel for at least 24 months after the enactment of the Panel legislation. There will be no cap either on the amount, or on the value, of publicly-owned property that may be claimed and/or restituted under the Panel legislation. The *in rem* return of works of art will be excepted from the scope of the Panel legislation.

25. The Austrian Federal Government will expeditiously make changes to certain pension and social benefits laws to assist victims of National Socialism. The value of these changes will be approximately \$112 over the next ten years.

26. The Austrian National Fund will provide all administrative support for the Committee. The costs of the "claims-based" and "equity-based" process will also be covered from the budget of the Austrian National Fund, and, where appropriate, out of the capital of the GSF. The administrative costs of the *in rem* process will be paid by the Austrian Federal Government. Attorneys' fees will be paid out of the GSF's initial capital. Lawyers in United States court actions can seek fees through an arbitration process, with the aggregate fee award capped at no more than \$3.6 million. Thus, counsel representing the victims are eligible to receive less of the GSF capital, on a percentage basis, than the percentage that attorneys in the recently-approved settlement between Holocaust victims and Swiss Banks can receive from that settlement fund.

27. The GSF legislation will require that the GSF, in conjunction with the Austrian National Fund, provide extensive publicity concerning the benefits that the GSF will offer and procedures for applying for such benefits. The Austrian National Fund will consult with the United States concerning the proposed publicity plan.

28. A key point regarding the GSF is that all victims with Nazi-era claims against Austria and/or Austrian companies not covered by the Reconciliation Fund are eligible to submit claims to the GSF, including claims for *in rem* restitution of publicly-owned property, but excluding claims for *in rem* restitution of works of art. Indeed, throughout the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs, but also the interests of heirs and others who are similarly situated.

The United States' Interests in the GSF

29. The creation and successful operation of the GSF is in the enduring and high interests of the United States. The United States Government believes, for the reasons set forth below, that all claims against Austria and/or Austrian companies arising out of or related to the National Socialist Era and World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation fund, should be pursued through the GSF.

30. First, it is an important policy objective of the United States to bring some measure of justice to Holocaust survivors and other victims of the Nazi era, who are elderly and are dying at an accelerated rate, in their lifetimes. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

31. The GSF, like the Austrian Fund "Reconciliation, Peace and Cooperation" and the German Foundation "Remembrance, Responsibility, and the Future," is an excellent example of how such cooperation can lead to a positive result. Without question, the GSF will provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays and legal hurdles. Moreover, the GSF will employ standards of proof that are more relaxed than would be the case with litigation in U.S. courts. Litigation, even if successful, could only benefit claimants subject to the jurisdiction of U.S. courts. By contrast, the GSF will benefit all those with Nazi-era property/aryanization claims -- against existing and defunct companies, against private and public companies, and against S.S.-controlled companies -- as well as those with claims not covered by the Reconciliation Fund. Indeed, as a result of the inclusion in the GSF not only of Austrian companies that existed during the Nazi era, but also of

the Austrian Federal Government and Austrian companies that did not exist during the Nazi era, the GSF, will be able to comprehensively cover all Nazi-era property/aryanization claims against Austria and/or Austrian companies, and all other claims not covered by the Reconciliation Fund.

32. There was broad consensus among the participants in the negotiations concerning the level of the GSF's funding, eligibility criteria, payment system, and the allocation of its funding among various categories of claims. No amount of money could truly compensate plaintiffs for the wrongs done to them. But the payments they will receive through the GSF, and through the enhanced social benefits the Austrian Federal Government has committed to provide, will serve as a recognition of their suffering and will enable them to live with less difficulty than would be the case without the payments. In addition, creation of the GSF will directly benefit the heirs of victims who did not survive by ensuring the eligibility of such heirs to bring claims to the GSF on the same basis as survivors.

33. The United States, together with the participating lawyers for the victims and all other parties to the negotiations, therefore believes that the GSF is fair under all the circumstances. The creation of the GSF, like the creation of the Austrian Fund "Reconciliation, Peace and Cooperation" and the German Foundation, "Remembrance, Responsibility, and the Future," the United States hopes, will serve as an example to other nations and in other cases where resolution of claims by victims of the Nazi era for restitution and compensation has not yet been achieved.

34. Second, establishment of the GSF helps further the close cooperation between the United States and our democratic ally and trading partner, Austria. One of the most important reasons the United States took such an active role in facilitating a resolution of the issues raised

in this litigation is that it was asked by the Austrian Federal Government to work as a partner in helping to make both the Reconciliation Fund and the GSF initiatives a success. Since 1945, the United States has sought to work with Austria to address the consequences of the Nazi era and World War II through political and governmental acts, beginning with the first compensation and restitution laws in post-war Austria that were passed during the Allied occupation. In recent years, Austrian-American cooperation on these and other issues has continued, and the joint effort to develop the Reconciliation Fund and the GSF has helped solidify the close relationship between the two countries, which are important to U.S. interests in Europe, and particularly Central and Eastern Europe.

35. Austria today is an important factor to the prosperity of Europe, and particularly the new democracies of Central and Eastern Europe. Austria has worked with the United States in promoting democracy for the last forty-five years, and is instrumental to the economic development of Central and Eastern Europe. A new member of the European Union, Austria has supported integration of the European Union as well as efforts to assure that the former communist countries of Central and Eastern Europe continue their democratic development within a market economy. Our continued cooperation with Austria is important to helping achieve these United States interests.

36. Third, like the Reconciliation Fund, the GSF helps further the United States' interest in maintaining good relations with Israel and with Western, Central, and Eastern European nations, from which many of those who suffered during the Nazi era and World War II come. Those who are eligible to make claims under the GSF include the too-long forgotten "double victims" of two of the twentieth century's worst evils -- Nazism and Communism.

Some one million citizens of Central and Eastern Europe were forced into labor by the Nazis, over 100,000 of which worked on the territory of the present-day Republic of Austria, and then lived for over four decades under the iron rule of Communist governments and were denied compensation until recent years. The GSF complements the German Foundation "Remembrance, Responsibility, and the Future" as part of a comprehensive effort to compensate survivors and heirs with Nazi-era property/aryanization claims in these former Iron Curtain countries, and, indeed, in other European countries.

37. Fourth, the participating plaintiffs' counsel, the defendants, and victims' representatives are united in seeking dismissal of Nazi-era property/aryanization claims against Austria and/or Austrian companies (and all other claims covered by the GSF) in favor of the remedy provided by the GSF, and the United States strongly supports this position. The alternative to the GSF would be years of litigation whose outcome would be uncertain at best, and which would last beyond the expected life span of the large majority of survivors. Ongoing litigation could lead to conflict among survivors' organizations and among survivors and Austrian industry, conflicts into which the United States and Austrian governments would inevitably be drawn. There would likely be threats of political action, boycotts, and legal steps against corporations from Austria, setting back Austrian-American economic cooperation.

38. Although the resolution of this litigation is not part of a "settlement" in name, the Austrian Federal Government and Austrian companies have insisted on dismissal of all pending Nazi-era property/aryanization claims against Austria and/or Austrian companies (as well as any other claim covered by the GSF) as a precondition to allowing the GSF to make payments to victims. The United States strongly supports the creation of the GSF, and wants its benefits to

reach victims as soon as possible. In the context of the GSF, therefore, it is in the enduring and high interest of the United States to vindicate that forum by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all property/aryanization claims against Austria and/or Austrian companies arising out of or relating to the Nazi era or World War II (and any other claims covered by the GSF).

39. Fifth, and finally, the GSF, like the Austrian Fund "Reconciliation, Peace and Cooperation" like the German Foundation "Remembrance, Responsibility, and the Future," is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Although no amount of money will ever be enough to make up for Nazi-era crimes, the Austrian Federal Government has created compensation, restitution, and other benefit programs for Nazi-era acts that have resulted in significant payments. With the \$150 million the Austrian Federal Government has committed for certain claims of survivors in the Framework Agreement, the GSF adds \$210 million plus interest, increased social benefits amounting to approximately \$112 million over the next ten years, and an arbitration process for *in rem* restitution of publicly-owned property, including property formerly owned by Jewish communal organizations, to these payments and complements prior programs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 1/19/01

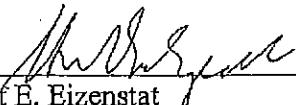

Stuart E. Eizenstat
Deputy Secretary of the Treasury
and Special Representative of the
President and Secretary of
State on Holocaust Issues

Exhibit 8

Statement of Secretary of State
Madeleine K. Albright Regarding Austria

January 19, 2001

STATEMENT BY SECRETARY OF STATE MADELEINE K. ALBRIGHT
AUSTRIAN GENERAL SETTLEMENT FUND

1. The United States and the Republic of Austria ("Austria") are proud to have worked together, in close partnership, towards the establishment of the General Settlement Fund ("GSF"). The establishment of the GSF will be a significant achievement, as it will provide a measure of justice to thousands of victims of the Nazi era.
2. This statement explains why the establishment of the GSF is in the foreign policy interests of the United States and why it would be in the foreign policy interests of the United States for the GSF to be the exclusive forum and remedy for the resolution of all claims asserted against Austria and/or Austrian companies involving or related to the National Socialist Era and World War II, excluding forced and slave labor claims and all other claims covered by the Austrian Fund "Reconciliation, Peace and Cooperation" ("Reconciliation Fund"), and further excluding *in rem* claims for works of art.
3. The establishment of the GSF will significantly reduce the tensions surrounding a number of very sensitive issues. It will fund payments to victims of the Nazi era who otherwise would have to engage in continued litigation over the subject, without any certainty of recovery. The United States and Austrian Governments would inevitably be drawn into ongoing debates among victims' representatives. The debates would likely be contentious and, in the United States, result in threats of sanctions and boycotts, and political and legal action against Austrian companies and the Austrian Government. This could then trigger retaliatory action not only by Austria, but by the European Union as well. Merely the threat of sanctions and boycotts could have a chilling effect on our political and economic relations with Austria.
4. It is in the foreign policy interests of the United States to take steps to address the consequences of the Nazi era, to learn the lessons of, and teach the world about, this dark chapter in European history and to seek to ensure that it never happens again. To this end, the GSF, by ensuring the eligibility of heirs of victims that did not survive to bring claims to the GSF on the same basis as survivors, significantly advances the United States' foreign policy interests.
5. Establishment of the GSF will strengthen the ties between the United States and our democratic ally and trading partner, Austria. Austria has supported our efforts to promote stability and democracy in Central and Eastern Europe. The end of the Cold War has reinforced Austria's position as an important gateway to Eastern Europe for trade and investment. Our ties to Austria thus are important to American interests in Europe, and particularly Central and Eastern Europe.
6. Austrian-American cooperation has been exemplary throughout these discussions. Our two governments, represented by Deputy Treasury Secretary Eizenstat and

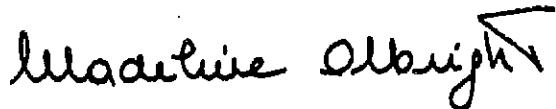
Ambassador Ernst Scharipa, have served as facilitators of this historic effort to continue to reconcile the complex and painful results of the Nazi era and the Second World War. The cooperation between Austria and the United States and the strong U.S.-Austrian relationship enabled the co-chairmen to resolve a series of very complex and difficult political issues during the negotiations. This cooperation has reflected the spirit of the close relationship that has developed between the United States and Austria during the past forty-five years. It is this relationship that establishment of the GSF will strengthen.

7. The GSF will cover, under relaxed standards of proof, claims against Austrian companies now defunct or not subject to U.S. jurisdiction, including SS companies and companies owned by the Austrian government. For those with such claims, the Fund represents a unique avenue for obtaining a measure of long-awaited justice.

8. As a result of the establishment of the GSF, residents of Central and Eastern Europe, who may have Nazi-era property/aryanization claims against Austria and/or Austrian companies, or any other claims covered by the GSF, will be receiving a long-awaited and deserved measure of justice. One of the most important achievements of the GSF will be to provide a measure of justice not only to Jewish victims of the Nazi era, but belated recognition and payments to these double victims of two of the 20th Century's worst evils -- Nazism and Communism.

9. For all of the above reasons, and because the Austrian Government asked the United States to work as partners with it in facilitating this historic initiative, from October 2000 until January 2001, the United States played a central role in facilitating discussions among the parties, which will provide funds for dignified payments to those who suffered the aryanization, theft, or destruction of their property at the hands of the Nazi regime or Austrian companies during World War II and the Nazi era.

10. The Austrian Federal Government and Austrian companies have both agreed to contribute \$360 million (plus interest calculated over a period of two years) to establish the GSF, have pledged increased social benefits for victims totaling approximately \$112 over the next ten years, and have agreed to establish an arbitration process for *in rem* claims for publicly owned property, including property formerly owned by Jewish communal organizations. In return, they seek and deserve legal peace with respect to all property/aryanization claims against Austria and/or Austrian companies involving or relating to the National Socialist era or World War II, and any other claims covered by the GSF, excluding *in rem* claims for works of art.



Madeleine K. Albright
January 19, 2001

Exhibit 9

Declaration of Special Envoy
Douglas A. Davidson Regarding Austria

DECLARATION BY SPECIAL ENVOY DOUGLAS A. DAVIDSON

I, Douglas A. Davidson, hereby declare and state as follows:

1. I am the Special Envoy for Holocaust Issues in the United States Department of State.
2. This declaration describes Austria's implementation of the General Settlement Fund ("GSF") and Reconciliation Fund Agreements. The United States regards Austria's commitments under these Agreements to be fully implemented.
3. The GSF, together with the Austrian Reconciliation Fund and the German Foundation and French bank agreements, were the result of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Although no amount of money could ever fully redress Nazi-era crimes, the Austrian Federal Government has created compensation, restitution, and other benefit programs for Nazi-era acts that have resulted in significant payments to a large number of Holocaust survivors and other victims of the Nazi era in their lifetimes. To summarize: the Austrian Federal Government has paid out €352 million to 130,000 individuals through the Reconciliation Fund, and \$150 million in payments were made for Tenancy Rights and related losses on over 20,000 applications. Moreover, as part of the GSF agreement, Austria's health service paid out €115 million between 2002 and 2009 to cover increased nursing home care benefits to thousands of beneficiaries who were forced to flee Austria or were otherwise victims of National Socialism; most of these victims still reside outside of Austria. Austria contributed \$210 million to the GSF—of which 96% has been distributed to over 19,000 beneficiaries—and we understand that when the General Settlement Fund is concluded, approximately 24,000 people from over 75 countries (one-third residing in the United States) will have received payments from the GSF. In addition, the GSF's continuing arbitration process

has returned publicly-held property with an estimated value thus far in excess of €40 million (as of late 2010). This amount does not include an additional \$8 million in compensation for a property that was formerly owned by Hakoah, a Jewish communal organization.

4. Beyond the numbers, the Austrian National Fund has undertaken very thorough work to implement the General Settlement Fund Agreement. The General Settlement Fund compensation program involves several different categories of assets and provides compensation to both survivors and, if appropriate, to their heirs with relaxed standards of proof much lower than in domestic U.S. law. Implementation of the complex compensation programs relied heavily on assisting claimants with significant independent research to identify heirs and demonstrate property ownership, and the digitizing and organization of huge amounts of documents.

5. The United States' view is that its long-standing, and ongoing, pursuit of cooperative compensation arrangements with Austria and other governments has achieved justice for the greatest numbers of Holocaust victims, survivors and heirs. Going forward, the United States is focusing its efforts in this regard on the new democracies of Central and Eastern Europe where the preponderance of Europe's Jewish population once lived. It is important to these ongoing efforts that the United States fully perform its obligations by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all claims against Austria and Austrian companies covered by the General Settlement Fund or Reconciliation Fund Agreements.

I declare under penalty of perjury that the foregoing is true and correct.

Dated 2/14/2011

Douglas A. Davidson

Douglas A. Davidson
Special Envoy for Holocaust Issues

Exhibit 10

**Executive Agreement Between
the United States and Austria**

Westlaw.

40 I.L.M. 523, 40 I.L.M. 523 (2001), 2001 WL 685580 (I.L.M.)

Page 1

40 I.L.M. 523, 40 I.L.M. 523 (2001), 2001 WL 685580 (I.L.M.)

International Legal Materials
Treaties and Agreements

May, 2001

AUSTRIA-UNITED STATES: AGREEMENT BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE AUSTRIAN
FUND “RECONCILIATION, PEACE AND COOPERATION” (RECONCILIATION FUND)

October 24, 2000

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*523 This document was reproduced and reformatted from the text appearing at the Reconciliation Fund website (visited May 3, 2001) <http://www.reconciliationfund.at>.

Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund “Reconciliation, Peace and Cooperation” (Reconciliation Fund)

The Austrian Federal Government (“Austria”) and the Government of the United States of America (“United States”)

Intending to shape relations between their two States in a spirit of friendship and cooperation for the future and to successfully resolve issues stemming from the past,

Recognizing that Austria has, by adopting legislation approved by the Allied Forces or building on international agreements to which the United States is a party, and in close cooperation with victims' associations and interested governments, provided restitution and compensation to victims of National Socialist persecution,

Noting that, by means of the Austrian Fund for Reconciliation, Peace, and Cooperation (“Fund”), formed under Austrian federal law as an instrumentality of Austria and funded by contributions from Austria and Austrian companies, Austria and Austrian companies wish to respond to and acknowledge the moral responsibility for all claims involving or related to the use of slave or forced labor during the National Socialist era or World War II,

Understanding that this Agreement does not affect Articles 21 and 26 of the 1955 State Treaty for the Re-Establishment of an Independent and Democratic Austria,

Recognizing that Austrian companies, having contributed to the Fund should not be asked or expected to contribute again, in court or elsewhere, for any claims asserted involving or related to the use of slave or forced labor during the National Socialist era or World War II,

Recognizing as legitimate the interest Austria and Austrian companies have in all-embracing and enduring legal peace with respect to all claims asserted involving or related to the use of slave or forced labor during the Na-

tional Socialist era or World War II, and further recognizing that such interest is fundamental to the contribution of Austrian companies to the Fund,

Recognizing that it is in the interests of both Austria and the United States (the "parties") to have a resolution of these issues that is non-adversarial and non-confrontational, outside of litigation,

***524** Recognizing that both parties desire all-embracing and enduring legal peace with respect to all claims asserted against Austria and/or Austrian companies involving or related to the use of slave or forced labor during the National Socialist era or World War II, to advance their foreign policy interests,

Having worked as partners, in consultation with other interested parties and governments to assist Austria and Austrian companies to achieve wide support for the total amount of funds and the eligibility criteria of the Fund and for the establishment of all-embracing and enduring legal peace, with respect to all claims involving or related to the use of slave or forced labor during the National Socialist era or World War II,

Noting that the Fund will assure broad coverage of victims and broad participation by companies, which could not be possible through judicial proceedings,

Believing that the Fund will provide as expeditious as possible a mechanism for making fair and speedy payments to now elderly victims,

Noting that Austria will conclude Agreements with Central and Eastern European countries representing the majority of victims eligible to receive payments from the Fund to guarantee smooth and efficient operation of the Fund,

Noting that Austria has coordinated with the Federal Republic of Germany and its Foundation "Remembrance, Responsibility and the Future" [FNa1] to provide as broad a coverage as possible for any claims involving or related to the use of slave or forced labor during the National Socialist era or World War II,

FNa1. See 39 ILM 1298 (2000) -- ILM Editor.

End of Footnote(s). Having in mind, that the Fund covers, and that it would be in the interests of both parties for the Fund to be the exclusive remedy and forum for the resolution of, all claims that have been or may be asserted against Austria and/or Austrian companies involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund,

Recognizing that Austria has passed legislation proposed by all political parties represented in the National Council to establish the Fund,

Have agreed as follows:

Article 1

(1) The parties agree that the Fund covers, and that it would be in their interest for the Fund to be the exclusive remedy and forum for the resolution of, all claims that have been or may be asserted against Austria and/or Austrian companies involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund.

(2) Austria agrees to ensure that the Fund shall provide appropriately extensive publicity concerning its existence, its objectives, and the availability of funds.

(3) Annex A sets forth the principles that shall govern the operation of the Fund. Austria assures that the Fund will be subject to supervision by an Austrian authority; any person may request that the Austrian authority take measures to ensure compliance with the legal requirements of the Fund.

(4) Austria agrees to actively and expeditiously continue to pursue discussions with interested parties, based on an agreed upon framework with such parties, concerning potential gaps and deficiencies in the restitution and compensation legislation enacted by Austria after World War II to address aryanization issues during the National Socialist era or World War II on the territory of present-day Austria with a view to creating, in agreement with the *525 United States, suitable potential remedies in the meaning of Article 2 paragraph 2 and Article 3 paragraph 3 hereof. The United States Government will facilitate this process.

Article 2

(1) The United States shall, in all cases in which the United States is notified that a claim described in Article 1 (1) has been asserted in a court in the United States, inform its courts through a Statement of Interest, in accordance with Annex B, and consistent therewith, as it otherwise considers appropriate, that it would be in the foreign policy interest of the United States for the Fund to be the exclusive remedy and forum for resolving such claims against Austria and/or Austrian companies as defined in Annex C, and that dismissal of such cases would be in its foreign policy interest.

(2) The United States shall also, in all cases in which Austria, in agreement with the United States, establishes a suitable potential remedy for other claims against Austria and/or Austrian companies arising out of the National Socialist era or World War II, file a Statement of Interest, *mutatis mutandis*, as described in Article 2 (1).

(3) The United States, recognizing the importance of the objectives of this agreement, including all-embracing and enduring legal peace, shall, in a timely manner, use its best efforts, in a manner it considers appropriate, to achieve these objectives with state and local governments.

Article 3

(1) This agreement is intended to complement the creation of the Fund and to foster all-embracing and enduring legal peace for Austria and Austrian companies with respect to any claims involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund.

(2) This agreement shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era or World War II.

(3) The United States shall take appropriate steps to oppose any challenge to the sovereign immunity of Austria with respect to any claim that may be asserted against the Republic of Austria involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund, and other claims arising out of the National Socialist era or World War II for which Austria and the United States agree that a suitable potential remedy has been provided.

Article 4

Annexes A, B, and C shall be an integral part of this Agreement.

Article 5

The Agreement shall enter into force on the date on which the parties agree by exchange of notes.

DONE at Vienna, the day of October, 2000, in duplicate in the German and English languages, both texts being equally authentic.

For the Austrian Federal Government:

For the Government of the United States of America:

***526 Annex A of the Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund ““Reconciliation, Peace and Cooperation””**

Principles Governing the Operation of the Fund

Article 1(3) of the Agreement provides that the principles governing the operation of the Fund will be set forth in Annex A. This Annex reflects key elements of the Fund that form a basis for the parties' mutual commitments in the Agreement.

The term “Reconciliation Fund legislation” refers to the Federal Law establishing the “Fund for Reconciliation, Peace and Cooperation (Reconciliation Fund),” the commentary adopted by the Constitutional Committee of the Austrian National Council which were communicated to the United States, and the by-laws to be established and governing the operation of the Fund.

1. The Reconciliation Fund legislation will state that the purpose of the Fund is to provide payments through partner organizations and, where no such partner organization exists, through the Fund itself, to all those who suffered as slave or forced laborers and to certain others who suffered during the National Socialist era or World War II on the territory of present-day Austria.
2. The Reconciliation Fund legislation will provide for a Board of Trustees that consists of an equal number of members appointed by the Austrian Government and Austrian companies and by other governments and victims' representatives, except that the Chairman shall be the Chancellor of the Republic of Austria. All Fund operations will be transparent and by-laws and similar procedures will be made public. The Board will adopt by-laws by a simple majority vote. The by-laws will include a provision that will state that a purpose of the Fund is to benefit, through projects, the heirs of those who have not survived.
3. The Reconciliation Fund legislation will provide that the Fund and all partner organizations will be audited.
4. The Reconciliation Fund legislation will provide that each person who was forced to work while under detention in a concentration camp or similar place of confinement under inhumane conditions (“slave laborer”) will receive AS 105,000. The Reconciliation Fund legislation will also provide that persons who were transported by force or by deception into work on the territory of the present-day Republic of Austria, or who, after a voluntary stay on the territory of the present-day Republic of Austria, were prevented from returning home and who were subjected to particularly bad living conditions, and either were subject to confinement or some other significant limitation of freedom or were deprived of their personal rights or subjected to particularly severe disciplinary

measures, and were forced to work ("forced laborers"), will each receive AS 35,000 if they had to perform forced labor in industry, business, construction, power companies and other commercial enterprises, public institutions, rail transportation or postal service, and AS 20,000 if they had to do forced labor exclusively in agriculture or forestry or exclusively performed personal services work. In addition, the Reconciliation Fund legislation will provide that the Fund will make payments of AS 105,000, AS 35,000 or AS 20,000 to natural persons who were residents of the territory of the present-day Republic of Austria and who, because of political motives, reasons of ancestry, religion, nationality, sexual orientation, physical or mental handicap, accusation of supposed anti-social behavior or in connection with medical experiments, were coerced by the National Socialist regime to work on the territory of the present-day Republic of Austria under conditions equivalent to those cited above. The Reconciliation Fund legislation will also *527 provide that persons who were transported as children under the age of 12 with one or both parents, one or both of whom performed slave or forced labor, onto the territory of the present-day Republic of Austria, or who were born during their mother's period of slave or forced labor on the territory of the present-day Republic of Austria, will receive payments up to the amount that their parent(s) are or would have been eligible to receive, i.e., AS 105,000, AS 35,000 or AS 20,000. The Reconciliation Fund legislation will also provide that persons who suffered demonstrably severe and lasting physical or psychological damage, due to work they had to do while performing forced labor on the territory of the present-day Republic of Austria but do not qualify to receive payments under another category, will be able to receive up to the amount applicable to their categories, i.e., AS 35,000 or AS 20,000 ("special hardship"). The by-laws will provide that a payment of up to AS 105,000, AS 35,000 or AS 20,000, depending on the circumstances, will be made to all others who can make a credible claim that they were forced to work on the territory of the present-day Republic of Austria under conditions similar to those faced by slave or forced laborers as defined in the Reconciliation Fund legislation, who are not otherwise covered by the Reconciliation Fund legislation. The Reconciliation Fund legislation will also provide that a supplementary payment of AS 5,000 will be made to women who, during their time as forced laborers on the territory of the present-day Republic of Austria, gave birth to children in maternity facilities for eastern workers or who were forced to undergo abortions.

5. The Reconciliation Fund legislation will provide that slave or forced laborers will not be able to receive payments for their claims involving or related to their slave or forced labor during the National Socialist era or World War II from both the Fund and the German Foundation, "Reinembrance, Responsibility and the Future."

6. The Reconciliation Fund legislation will provide that the eligibility for the Fund will be limited to survivors, or, if the eligible person has died on or after February 15, 2000, then the heir(s) according to the national law of the person in question.

7. The Reconciliation Fund legislation will provide that all eligibility decisions will be based on relaxed standards of proof.

8. The Reconciliation Fund legislation will make clear that receipt of payment from Fund funds will not affect the recipient's eligibility for social security or other public benefits. There will be no offsets for any prior compensation payments.

9. The Reconciliation Fund legislation will provide that each applicant for a Fund payment will be required to state that, upon receipt of a payment, he or she will waive any and all alleged National Socialist era or World War II claims against the Republic of Austria and/or Austrian companies, as well as against Germany and German companies, involving or related to slave or forced labor.

10. The bilateral agreements will provide that each partner organization will create an internal appeals procedure and the Reconciliation Fund legislation will provide that the Fund will create an internal appeals procedure.

11. The Reconciliation Fund legislation will require that the Fund provide appropriately extensive publicity concerning the benefits that the Fund will offer and how to apply. The Board of Trustees, in cooperation with the partner organizations, will determine the form and content of such publicity.

12. The Reconciliation Fund legislation will allow applications to be made to the partner organizations and to the Fund itself for up to two years after the entry into force of the Federal Law establishing the "Fund for Reconciliation, Peace and Cooperation (Reconciliation Fund)."

13. The Reconciliation Fund legislation will authorize the Fund and its partner organizations to receive information from Austrian Government agencies and other public bodies that is necessary for the fulfillment of their responsibilities, in so far as this is not contrary to particular statutes or regulations or the legitimate interests of the persons concerned.

*528 14. The Reconciliation Fund legislation will encourage Austrian companies to open their archives relating to the National Socialist era and World War II.

15. The Reconciliation Fund legislation will enter into force no later than when the funds of the Fund are made available to it and the bilateral agreements between Austria and the Governments of Belarus, the Czech Republic, Hungary, Poland, Russia, Ukraine, and the United States have been signed.

Annex B of the Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund "Reconciliation, Peace and Cooperation"

Pursuant to Article 2, Paragraph 1, the United States will timely file a Statement of Interest and accompanying formal foreign policy statement by the Secretary of State and Declaration of Deputy Treasury Secretary Stuart E. Eizenstat in all pending and future cases, regardless of whether the plaintiff(s) consent(s) to dismissal, in which the United States is notified that a claim has been asserted against Austria and/or Austrian companies involving or related to (i) the use of slave or forced labor during the National Socialist era or World War II or (ii) any other claims covered by the Fund.

The Statement of Interest will make the following points:

1. As indicated in the correspondence between the President of the United States and the Federal President of the Republic of Austria, the President of the United States has concluded that it would be in the foreign policy interests of the United States for the Fund to be the exclusive forum and remedy for the resolution of all claims asserted against Austria and/or Austrian companies involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund.

2. Accordingly, the United States believes that all claims identified in paragraph one above should be pursued (or in the event the Fund has been exhausted, should timely have been pursued) through the Fund instead of the courts.

3. As referred to in the above-mentioned correspondence, dismissal of all claims identified in paragraph one above would be in the foreign policy interests of the United States. The United States will recommend dismissal on any valid legal ground which, under the United States system of jurisprudence, will be for the United States

courts to determine. The United States will explain that, in the context of the Fund, it is in the enduring and high interest of the United States to support efforts to achieve dismissal of all claims asserted against Austria and/or Austrian companies involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund. The United States will explain fully its foreign policy interests in achieving dismissal, as set forth below.

4. The United States' interests include the interest in a fair and prompt resolution of the issues involved in these lawsuits to bring some measure of justice to the victims of the National Socialist era or World War II in their lifetimes; the interest in the furtherance of the close cooperation this country has with the friendly country and trading partner, Austria; the interest in maintaining good relations with Israel and other Western, Central, and Eastern European nations, from which many of those who suffered during the National Socialist era or World War II come; and the interest in achieving legal peace for all claims that have been or may be asserted against Austria and/or Austrian *529 companies involving or related to the use of slave or forced labor during the National Socialist era or World War II and any other claims covered by the Fund.

5. The Fund is an important part of a half-century effort to complete the task of bringing justice to victims of the Holocaust and victims of the National Socialist era. The Fund complements prior compensation, restitution, and pension programs by Austria for acts arising out of the National Socialist era or World War II.

6. The participation in the Fund not only by the Austrian Government and companies that existed on the territory of present-day Austria during the National Socialist era or World War II, but also by companies that did not exist during the National Socialist era or World War II, as well as Austria's coordination with the Federal Republic of Germany and its Foundation "Remembrance, Responsibility and the Future," allows comprehensive coverage of the claims of slave or forced laborers and certain other victims.

7. Plaintiffs in these cases face numerous legal hurdles, including, without limitation, foreign sovereign immunity, justiciability, international comity, statutes of limitation, jurisdictional issues, *forum non conveniens*, difficulties of proof, certification of a class of heirs and legal precedent adverse to their claims. The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Fund in themselves provide an independent legal basis for dismissal, but will reinforce the point that U.S. policy interests favor dismissal on any valid legal ground.

8. The Fund is fair and equitable, based on: (a) the advancing age of the plaintiffs, their need for a speedy, non-bureaucratic resolution, and the desirability of expending available funds on victims rather than litigation; (b) the Fund's level of funding, allocation of its funds, payment system, and eligibility criteria; (c) the difficult legal hurdles faced by plaintiffs and the uncertainty of their litigation prospects; (d) the particular difficulties presented by the claims of heirs; and (e) the commitment of the Austrian government to actively and expeditiously continue to pursue discussions with interested parties, based on an agreed upon framework with such parties, concerning potential gaps and deficiencies in the restitution and compensation legislation enacted by Austria after World War II to address aryorganization issues during the National Socialist era or World War II on the territory of present-day Austria with a view to creating, in agreement with the United States, suitable potential remedies within the meaning of Article 2 paragraph 2 and Article 3 paragraph 3 hereof.

9. The structure and operation of the Fund will assure (or has assured) swift, impartial, dignified, and enforceable payments; appropriately extensive publicity has been given concerning its existence, its objectives, and the

availability of funds; and the Fund's operation is open and accountable.

Annex C of the Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund ““Reconciliation, Peace and Cooperation””

Definition of “Austrian Companies”

“Austrian companies,” as used in this Executive Agreement and the Annexes thereto are defined as in Section 5(2) of the legislation establishing the Fund “Reconciliation, Peace and Cooperation,” as follows:

- *530 1. Enterprises that, at any given time, had or have their headquarters within the borders of the present-day Republic of Austria as well as their parent companies (past or present, direct or indirect), even when the latter had or have their headquarters abroad.
- 2. Enterprises situated outside the borders of the present-day Republic of Austria in which Austrian enterprises as described in Sentence (1), at any given time, had or have a direct or indirect financial participation of at least 25 percent.

The definition of “Austrian companies” in this Executive Agreement and the Reconciliation Fund legislation are meant to be identical (as are the words ““company” and “enterprise”) and should be interpreted in an identical manner.

Exhibit 11

Joint Statement and Exchange of Notes Between the United States and Austria

Westlaw.

40 I.L.M. 565, 40 I.L.M. 565 (2001), 2001 WL 685611 (I.L.M.)

Page 1

40 I.L.M. 565, 40 I.L.M. 565 (2001), 2001 WL 685611 (I.L.M.)

International Legal Materials
Treaties and Agreements

May, 2001

UNITED STATES-AUSTRIA: JOINT STATEMENT AND EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND AUSTRIA CONCERNING THE ESTABLISHMENT OF THE GENERAL SETTLEMENT FUND FOR NAZI-ERA AND WORLD WAR II CLAIMS

January 2001

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*565 This document was reproduced and reformatted from the official version of the Statement and Exchange of Notes obtained from the U. S. Department of State.

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Joint Statement

(January 17, 2001)

The Governments of the Republic of Austria (“Austria”) and the United States of America (“United States”),

Austrian companies,

The Conference on Jewish Material Claims (including the Central Committee of Jews from Austria in Israel and the American Council for Equal Compensation of Nazi victims from Austria),

The Austrian Jewish Community,

As further participants, the undersigned attorneys,

Noting that through the General Settlement Fund (providing for a Claims Committee and an Arbitration Panel), to be established under Austrian federal law and funded by contributions from Austria, including Austrian companies, Austria and Austrian companies acknowledge in accordance with the declaration of the Austrian Federal Government of February 3, 2000 the moral responsibility arising out of the tragic history of the 20th century and the horrendous crimes and in-

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justices of the National Socialist era and reaffirming the commitment to a self-critical scrutiny of the National Socialist past,

Noting that in the same declaration the Austrian Federal Government committed itself to ensure unreserved clarification, exposure of the structures of injustice, of National Socialism and the transmission of this knowledge to coming generations as a warning for the future, as well as to Austria's facing up to the light and dark sides of its past and to the deeds of all Austrians, good and evil, as its responsibility,

Noting the statement by Federal President, Thomas Klestil of October 24, 2000 at the occasion of the signing of the Agreement to settle the forced and slave labor issue,

Taking into account all measures of restitution, compensation and social welfare benefits for victims of National Socialism that have already been carried out by Austria in the past, while at the same time acknowledging that there were certain gaps and deficiencies in such measures,

Recalling the statement by Federal Chancellor Wolfgang Schuessel, on the occasion of the 55th anniversary of the re-establishment of the Republic of Austria, at the meeting of the Council of Ministers on April 28, 2000, affirming *566 that Austrians stand by the onerous heritage of their country and acknowledging that, when it comes to questions of restitution, compensation, and material reparation, the Second Republic was often too hesitant,

Considering Austria's legal status during the period of occupation by Nazi-Germany in 1938 and liberation by the Allied Powers in 1945, and further noting all provisions of the 1943 Moscow Declaration by the Allied Powers,

Recalling the relevant provisions of the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria, the 1959 Exchange of Notes Constituting an Agreement between the United States of America and Austria relating to the Settlement of Certain Claims under Article 26 of the Austrian State Treaty of May 15, 1955,

With a view to obtaining all-embracing and enduring legal peace with respect to all claims that have been or may be asserted against Austria and/or Austrian companies, as defined in Annex B, arising out of or related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund "Reconciliation, Peace, and Cooperation" ("Agreement") shall continue to govern, and further excluding in rem claims for works of art, and achieving legal closure of such claims, in accordance with Articles 2(2), 2(3), and 3(3) of the Agreement,

Understanding that insofar as the sum of USD 210 million to be made available by Austria and Austrian companies (including the Austrian insurance industry) for the General Settlement Fund is concerned, that sum is both a ceiling and a final amount and that all payments made from, and all costs incurred in connection with the General Settlement Fund shall be financed from that sum and the interest thereon, this with the exception of the administrative costs normally incurred by the National Fund.

Determined to secure by measures enumerated in Annex A a final global resolution and closure concerning all Austrian Jewish Communal properties, assets and interests that were seized liquidated or rendered defunct during the National Socialist era and its aftermath,

Recognizing that it would be in the participants' interest for the General Settlement Fund to be the exclusive forum for the resolution of all claims that have been or may be asserted against Austria and/or Austrian companies arising out of or

related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art,

Recognizing that the establishment of the General Settlement Fund does not create a basis for claims against Austria and/or Austrian companies,

Declare as follows:

1. All participants welcome and support, and declare their agreement with, the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, the establishment of the General Settlement Fund, established in conformity with the principles set forth in Annex A, paragraphs 2 and 3, and the measures for victims of National Socialism set forth in Annex A, paragraphs 4-9. The interests of those who suffered losses or damages arising out of or related to the National Socialist era or World War II, and their heirs, have been duly taken into account. Based on the circumstances, the participants consider the overall result fair to the victims and their heirs.
2. Given the advanced age of the victims concerned, the primary humanitarian objective of the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, and the General Settlement Fund, the participants will work to show results as soon as possible. All participants will work together in a cooperative, fair, and non-bureaucratic manner to ensure that the payments reach the victims quickly.
3. The participating Governments and other participants will proceed as follows:

*567 a. Austria will propose the necessary legislation to establish the General Settlement Fund in conformity with the principles set forth in Annex A, paragraphs 2 and 3, seek the changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4, and make good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9,

b. Austria and the United States will exchange notes. Such exchange contains the commitments undertaken by Austria to propose legislation by April 30, 2001 to establish the General Settlement Fund and to make good faith progress on the implementation of additional measures for victims of National Socialism. Such exchange of notes also contains the commitment undertaken by the United States to consider the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, the General Settlement Fund, established in conformity with the principles set forth in Annex A, paragraphs 2 and 3, the changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4, and the making of good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9, to constitute a "suitable potential remedy", as understood by Articles 2(2) and 3(3) of the Agreement, for all claims that have been or may be asserted against Austria and/or Austrian companies, as defined in Annex B, arising out of or related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art.

c. Austria and Austrian companies (including the Austrian insurance industry) will contribute to the General Settlement Fund a total amount of US \$210 million. The amount of US \$210 million plus interest, as set out below in paragraph, is in addition to the US \$150 million that will be distributed by the Austrian National Fund in accordance with paragraph 1 of Annex A.

d. The contribution of US \$210 million shall be due and payable to the General Settlement Fund once (1) the Exchange of Notes enters into force and (2) 30 days have passed since all pending claims against Austria and/or Austrian companies, as of June 30, 2001, arising out of or related to the National Socialist era or World War II, including those lawsuits listed in Annex C, have been dismissed with prejudice, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem*

claims for works of art. Once the contribution has been made, distribution will begin in accordance with the procedures laid down in Annex A.

e. From the due date of the contribution interest at the Euribor rate shall accrue on the funds available at any given time until the General Settlement Fund has paid all approved claims. Austria will make available reasonable advanced funding to provide appropriate publicity concerning the establishment of the General Settlement Fund.

f. The undersigned counsel for plaintiffs will file motions or stipulations to dismiss with prejudice all claims, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art, they have filed in U.S. courts against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II, including those listed in Annex C. They will also cooperate in seeking the dismissal with prejudice of all other such claims.

g. Austria and the United States will exchange notes and the United States will thereupon take appropriate steps in accordance with Articles 2(2), 2(3) and 3(3) of the Agreement to assist Austria and Austrian companies in achieving legal peace for all claims that have been or may be asserted against Austria and/or Austrian companies arising out of or related to the National Socialist era or *568 World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art,

[Signatures]

Exchange of Notes between the Government of the United States of America and the Austrian Federal Government

The Embassy of the United States of America presents its compliments to the Federal Ministry for Foreign Affairs of the Republic of Austria, and has the honor to refer to the Preamble and to Articles 1(4), 2(2), 2(3), and 3(3) of the Agreement between the Government of the United States of America and the Austrian Federal Government concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund) ("Agreement"), signed October 24, 2000.

Noting the correspondence between the President of the United States and the Federal President of the Republic of Austria, in connection with the Agreement,

Recalling the relevant provisions of the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria, the 1959 Exchange of Notes Constituting an Agreement between the United States of America and Austria relating to the Settlement of Certain Claims under Article 26 of the Austrian State Treaty of May 15, 1955, as well as the contents of the letter dated December 19, 1961 from Dr. Nahum Goldman, the Chairman of the Committee for Jewish Claims on Austria, to Dr. Josef Klaus, the Austrian Federal Minister of Finance.

The United States welcomes the commitment of the Austrian Federal Government to provide immediate compensation for survivors pursuant to Annex A, paragraph 1, to propose legislation to the Austrian Parliament by April 30, 2001 to establish a General Settlement Fund ("GSF") (providing for a Claims Committee and an Arbitration Panel) in conformity with the principles set forth in Annex A, paragraphs 2 and 3, and to seek changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4.

The United States further welcomes the commitment of the Austrian Federal Government to make good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9.

The United States considers the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, the General Settlement Fund, established in conformity with the principles set forth in Annex A, paragraphs 2 and 3, the

changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4, and the making of good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9, to constitute a "suitable potential remedy", as understood by Articles 2(2) and 3(3) of the Agreement, for all claims that have been or may be asserted against Austria and/or Austrian companies, as defined in Annex B, arising out of or related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding in rem claims for works of art and, subject to the provisions of Annex A, paragraph 10, claims for in rem restitution of property owned by Austrian provinces and municipalities.

Upon fulfillment of the commitments of the Austrian Federal Government referred to above, the United States will support all-embracing and enduring legal peace for the above-mentioned claims, as provided for in the Agreement and herein.

The United States agrees that this exchange of notes and the establishment of the GSF shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era or World War II.

*569 Austria's note and this affirmative reply shall constitute an agreement between the United States and Austria, which shall enter into force when Austria notifies the United States, by diplomatic note, that it has implemented its commitments referred to above.

The United States agrees that Annexes A and B shall be integral parts of this agreement.

The Embassy of the United States of America takes this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Austria the assurance of highest consideration.

Attachment: As stated

/seal/

Embassy of the United States of America,

Vienna, January 23, 2001

Exchange of Notes between the Austrian Federal Government and the Government of the United States of America

Federal Ministry for Foreign Affairs

No 2140.02/0044e-BdSB/2001

Note Verbale

The Federal Ministry for Foreign Affairs of the Republic of Austria presents its compliments to the Embassy of the United States of America and has the honor to refer to the Preamble and to Articles 1(4), 2(2), 2(3) and 3(3) of the Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund "Reconciliation, Peace and Cooperation" ("Agreement"), signed October 24, 2000.

Noting the correspondence between the President of the United States and the Federal President of the Republic of Austria, in connection with the Agreement,

Recalling the relevant provisions of the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria, the 1959 Exchange of Notes Constituting an Agreement between the United States of America and Austria relating to the Settlement of Certain Claims under Article 26 of the Austrian State Treaty of May 15, 1955, as well as the contents of the letter dated December 19, 1961 from Dr. Nahum Goldman, the Chairman of the Committee for Jewish Claims on Austria, to Dr. Josef Klaus, the Austrian Federal Minister of Finance.

The Austrian Federal Government shall provide immediate compensation for survivors pursuant to Annex A, paragraph 1, propose legislation to the Austrian Parliament by April 30, 2001 to establish a General Settlement Fund ("GSF") (providing for a Claims Committee and an Arbitration Panel) in conformity with the principles set forth in Annex A, paragraphs 2 and 3, and seek changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4.

The Austrian Federal Government shall make good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9.

The Austrian Federal Government welcomes the commitment of the United States to consider the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, the General Settlement Fund, established in conformity with the principles set forth in Annex A, paragraphs 2 and 3, the changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4, and the making of good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, *570 paragraphs 5-9, to constitute a "suitable potential remedy", as understood by Articles 2(2) and 3(3) of the Agreement, for all claims that have been or may be asserted against Austria and/or Austrian companies, as defined in Annex B, arising out of or related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art and, subject to the provisions of Annex A, paragraph 10, claims for *in rem* restitution of property owned by Austrian provinces and municipalities.

The Austrian Federal Government welcomes the commitment of the United States, upon fulfilment of the commitments of the Austrian Federal Government referred to above, to support all-embracing and enduring legal peace for the above-mentioned claims, as provided for in the Agreement and herein.

The Austrian Federal Government agrees that this exchange of notes and the establishment of the GSF shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era or World War II.

This note and the United States' affirmative note in reply shall constitute an agreement between Austria and the United States which shall enter into force when Austria notifies the United States, by diplomatic note, that it has implemented its commitments referred to above.

Austria agrees that Annexes A and B shall be integral parts of this agreement.

The Federal Ministry of Foreign Affairs of the Republic of Austria takes this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Attachment: As stated

Vienna, 23 January 2001

/seal/

Annex A

The Exchange of Notes between the Government of the United States and the Austrian Federal Government provides that the principles governing the operation of the General Settlement Fund will be set forth in Annex A. The Exchange of Notes also provides that Austria will make good faith progress on the implementation of the additional measures for victims of the National Socialist era set forth in Annex A. This Annex reflects key elements of the General Settlement Fund (“GSF”) (providing for a Claims Committee and an Arbitration Panel) and the additional measures for victims of National Socialism that form the basis for the Exchange of Notes between the United States and Austria.

1. Immediate Compensation for Survivors: The Austrian Government will make a US \$150 million contribution to the National Fund, which will be distributed in its entirety on an expedited basis to all Holocaust survivors originating from or living in Austria as defined in the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism which will include a hardship clause. This amount will cover 1) apartment and small business leases; 2) household property; 3) personal valuables and effects. This amount will not cover potential claims against Dorotheum (which will be covered by the GSF, see *infra* para. 2) or *in rem* claims for works of art. This amount will be credited against the final cap for the GSF.

The amount of US \$150 million will be allocated to the Austrian National Fund according to the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism and the Committee Report thereto. Payments to survivors will begin immediately after entry into force of the Federal Law. Austria will provide such funding as may be required to enable the Austrian National Fund effectively to process applications for and distribute these funds to all approved applicants.

*571 2. Establishment of a General Settlement Fund: The Austrian Federal Government will propose the necessary legislation^[FN1] to the National Council by April 30, 2001 to establish a GSF. Austria will undertake its best efforts to ensure that this legislation is passed by June 30, 2001. The legislation will enter into force once all contributions have been made available. The GSF will be a voluntary fund that will provide *ex gratia* payments to certain applicants. The GSF will include both a “claims-based” and an “equity-based” component. The GSF will be capped at US \$210 million plus interest, at the Euribor rate, accruing to it beginning 30 days after all claims, pending as of June 30, 2001, against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II are dismissed with prejudice, and such interest shall continue to accrue on the funds available at any given time until the GSF has paid all approved claims. The US \$210 million contribution by Austria and Austrian companies (including the Austrian insurance industry)+ interest, under the terms described *supra*, will be in addition to the US \$150 million referred to *supra* in para. 1. The distribution of payments by the GSF will be based on decisions of the independent Claims Committee.

FN1. The term legislation as used in this Annex refers to Federal Laws to be passed by the Austrian National Council, the legislative history including all explanatory notes, and any bylaws to be adopted and governing the operation of any bodies established under such Federal Laws.

End of Footnote(s).a. The GSF legislation will establish an independent three-member Claims Committee (“Committee”) for all property/aryanization claims, and all other claims not covered by the Reconciliation Fund and the Arbitration Panel referred to *infra* in paragraph 3 that have been or may be asserted against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II, excluding *in rem* claims for works of art. The United States and Austria will each appoint one member; these two members will appoint a Chairperson. In the event that the Austrian and the United States designees are unable to agree upon and designate the

Chairperson within 60 days after the entry into force of the GSF legislation, the United States and Austria will enter into consultations to name a Chairperson. The Committee will work under the auspices of the Austrian National Fund, which will provide technical and administrative support to the Committee.

b. The GSF legislation will provide that 50% of the funds allocated for distribution from the GSF will be reserved for a "claims-based" process and 50% of such funds will be reserved for an "equity-based" process. The GSF legislation will provide that the GSF will distribute the funds allocated for the "claims-based" process on a pro-rata basis and the funds allocated for the "equity-based" process on a per-household^[FN2] basis.

FN2. Household on the present-day territory of the Republic of Austria between March 12, 1938 and May 9, 1945.

End of Footnote(s).c. The GSF legislation will require the Committee to establish simplified procedures, including simplified and expedited internal appeals for decisions made under the "claims-based" process. Such procedures will permit the attendance of observers to the "claims-based" process under circumstances to be defined and under strict rules of confidentiality. The GSF legislation will provide that decisions made under the "equity-based" process are not appealable. The GSF legislation will provide that the Committee will review all applications using relaxed standards of proof.

d. The General Settlement Fund is intended to benefit victims of National Socialism as defined in the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism. The GSF legislation will provide that such persons (including their heirs, as defined *infra* in paragraph 2(e)) and victims' communal organizations who/which suffered losses or damages as a result of or in connection with events having occurred on the territory of present-day Austria during the Nazi era or World War II are eligible to receive payment(s) from the GSF, provided that the criteria in *infra* paragraphs 2(f) or 2(g) are satisfied. The GSF legislation will also provide that the Committee will not have the authority to reopen cases that have been finally decided by an Austrian court or administrative body under Austrian restitution legislation or that have been settled after 1945. However, recognizing that there may have been certain gaps and deficiencies in the prior restitution legislation and further recognizing the *ex gratia* nature of the GSF, the Committee may award payments in the exceptional circumstances where the Committee unanimously determines that such decision or settlement constituted extreme injustice.

*⁵⁷² e. Definition of "heirs": The GSF legislation will provide that heirs as defined under the Austrian General Civil Code (ABGB) are eligible for payments.

f. "Claims-Based" Process: The GSF legislation will provide that the Committee may receive claims for payment for losses or damages as a result of or in connection with events having occurred on the territory of present-day Austria during the National Socialist era or World War II in the following categories:

- i. liquidated businesses including licenses and other business assets
- ii. real property
- iii. bank accounts, stocks, bonds, mortgages
- iv. moveable property not covered by the US \$150 million referred to in paragraph 1
- v. insurance policies (see *infra* paragraph n)

To be eligible for payment, claimant must show, under relaxed standards of proof (by submission of supporting material; if no relevant evidence is available, the claimant's eligibility can be made credible in some other way) the following:

- i. ownership of property at time of confiscation/aryanization/liquidation and
- ii. claim was never previously decided under prior restitution legislation or settled by agreement (if no contradictory evidence is presented, an affidavit asserting such, including plausible explanation for why claim was never decided or settled will be deemed sufficient), or that such decision or settlement constituted extreme injustice (see *supra* paragraph d) or

iii. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become available (affidavit asserting such, including plausible reason for inaccessibility will be deemed sufficient)

The GSF legislation will provide that the Committee may award a payment of no more than US \$2 million for any approved claim.

The GSF legislation will provide that in reviewing claims, the Committee will take into account prior restitution and compensation measures, including the US \$150 million referred to in paragraph 1, measures under the German Foundation “Remembrance, Responsibility and the Future,” or claims paid under ICHEIC claims-handling procedures, and the Bank Austria Settlement, to ensure that the claimant does not receive a payment under the “claims-based” process for same property for which compensation was paid under prior measures.

The GSF legislation will provide that the Committee may either award claimant pro-rata amount of capped amount allocated for “claims-based process” or, where Committee determines that claimant is unable to satisfy evidentiary requirements, Committee must either reject claim or refer claim to “equity-based process” for per-household payment. The GSF legislation will provide that if any funds remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

g. **“Equity-Based” Process:** The GSF legislation will provide that the Committee will make per-household, “equity-based” payments

*573 i. for any of the categories covered by *supra* paragraph 3(f) where claimant is not able to document specific claim(s), even under relaxed standards of proof, but panel has reason to assume that valid case of loss of property or

ii. for any of the categories covered by *supra* paragraph 3(f) where claim was previously decided or settled under prior restitution legislation, but majority of Committee has reason to believe decision or settlement was inadequate or

iii. where majority of Committee has reason to believe claimant was not adequately compensated for occupational or educational losses during the Nazi era on the territory of present-day Austria or

iv. for any claims arising out of or related to the National Socialist era or World War II not covered by the Reconciliation Fund or the Arbitration Panel.

The GSF legislation will provide that “equity-based” payments will be made on a per-household basis. The GSF legislation will provide that the Committee will award no more than one payment per household.

The GSF legislation will provide that applicants for “equity-based” payments must indicate on their application, to the extent possible, the address or location of the household for which they are seeking a payment, and the members of the household, including the heirs of those who have not survived, who are entitled to share the payment.

The GSF legislation will provide that “household” shall consist of survivors who lived in the “household” during this period and the heirs, as defined *supra* in paragraph e,

The GSF legislation will provide that if any funds remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

h. **Submission of Claims/Payments:** The GSF legislation will provide that a claimant may submit an application to the Committee either under the “claims-based” process, which may include multiple properties, or under the “equity-based” process. If the entire claim is rejected under the “claims-based” process claimant may submit an application under the “equity-based” process.

i. **Filing Periods:** The GSF legislation will allow applications to be made to the GSF for 24 months after the entry into force of the GSF law.

j. Waivers: The GSF legislation will provide that each applicant for a GSF payment will be required to state that, upon receipt of a payment from the GSF, he or she will, for him/herself and his/her heirs, waive any and all alleged claims against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II. Such a waiver will not preclude claimant from bringing an action against Austria and/or Austrian companies for the *in rem* return of a specifically identified piece of art or an action for *in rem* restitution for property owned by Austrian provinces and municipalities in accordance with *infra* para. 10.

The GSF and Panel legislation will provide that nothing therein will be deemed to waive any right of Holocaust survivors and heirs in any prior class action settlement reached in courts in the United States.

k. Eligibility for Social Security and Other Public Benefits: The GSF legislation will make clear that receipt of payment from GSF funds will not affect the recipient's eligibility for social security or other public benefits.

l. Publicity: The GSF legislation will require that the GSF, in conjunction with the Austrian National Fund, provide appropriately extensive publicity concerning the benefits that the GSF will offer and how to *574 apply. The Austrian National Fund will consult with the United States regarding its proposed publicity plan. In addition, the GSF legislation will authorize and encourage the Austrian National Fund to utilize existing databases of Austrian survivor populations from other sources.

m. Costs: The GSF legislation will provide that the administrative costs for the "claims-based" and "equity-based" processes will be covered from the budget provided for the Austrian National Fund and the GSF.

n. Insurance: The GSF legislation will reaffirm the commitment of the Austrian Federal Government to ensure that all insurance claims that come within the scope of claims-handling procedures adopted by the International Commission on Holocaust Era Insurance Claims (including those concerning valuation, standards of proof, and decisions of the Chairman) and are made against Austrian insurance companies not defined as "German companies" within the German Foundation Law, and not otherwise covered under ICHEIC, will be solely decided by the Committee and distributed by the GSF on the basis of such procedures. The Austrian Insurance Association will make the lists of Holocaust era policy holders publicly accessible, to the extent available.

The GSF legislation will provide that when an insurance claim is approved for payment, the Committee will promptly notify the Austrian National Fund. The Austrian National Fund will authorize the payment of that claim from the GSF funds (at a capped amount of US \$25 million within the GSF, which amount includes interest on US \$210 million) allocated for such payments out of the GSF.

In the event that the amount allocated for insurance claims under this paragraph is exhausted, and the Claims Committee certifies, in consultation with representatives of the plaintiffs' attorneys recommended by the United States, an amount of up to US \$5 million from the amount allocated to the "claims-based" process, as set forth *supra* in para. 2(b), may be used to pay insurance claims under this paragraph. All funds used to pay approved insurance claims will be distributed on a pro rata basis.

The GSF legislation will provide that if any funds allocated for insurance remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

3. Arbitration Panel for In Rem Restitution of Publicly Owned Property:

a. Austria will seek to provide, in accordance with the procedures described below, on a case by case basis, *in rem* restitution of publicly-owned property. Particular attention will be given to the issue of property formerly owned by Jewish communal organizations, taking into account the particular situation of the Austrian Jewish Community.

b. In connection with the establishment of the GSF, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001 to establish, fund, and authorize a three-member Arbitration Panel ("Panel") to address the *in rem* return of publicly-owned property, including property formerly owned by Jewish communal organizations. Austria will undertake its best efforts to ensure that this legislation is passed by June

30, 2001.

c. The implementation of *in rem* restitution of publicly-owned property will have to be in conformity with Austrian constitutional law and Austria's international obligations.

d. The Panel legislation will provide that the United States, with prior consultation with the Conference on Jewish Material Claims, the Austrian Jewish Community, and attorneys for the victims, and Austria will each appoint one member; these two members will appoint a Chairperson. All members of the three-person panel should be familiar with the relevant regulations both under Austrian and international law (in particular, the European Convention on the Protection of Fundamental Freedoms and Human *575 Rights). In the event that the Austrian and the United States designees are unable to agree upon and designate the Chairperson within 60 days after the entry into force of the Panel legislation, the United States and Austria will enter into consultations to name a Chairperson. The Panel legislation will provide for an expert to serve as a liaison between the Panel and the Austrian Historical Commission.

e. The Panel legislation will provide that the Panel will consider, on a case by case basis, claims for the *in rem* restitution of publicly-owned property.

f. The Panel legislation will provide that the Panel will not have the authority to reopen or reconsider cases that were previously decided under prior restitution legislation, or settled by agreement, or where claimant or relative has otherwise received compensation or other consideration for the property in question, except in the limited circumstances described *infra* in paragraph 3(g).

g. For the purposes of restitution *in rem*, the notion of "publicly-owned property" covers exclusively real estate/immovable property/buildings which:

i. between March 12, 1938 and May 9, 1945 was taken from the previous owners, whether without authorization or on the basis of laws or other orders, on racial, national, or, alternatively, other grounds in connection with the assumption of power by National Socialism; and

ii. was never subject of a claim that was previously decided by an Austrian court or administrative body under prior restitution legislation or a settlement by agreement, or where claimant or relative has never otherwise received compensation or other consideration for the property in question, except in exceptional circumstances where the Panel unanimously determines that prior settlement constituted an extreme injustice; and

iii. on January 17, 2001, was exclusively and directly, owned by the Federation ("Bund") or any legal person, agency, or subsidiary wholly-owned, directly or indirectly, by the Federation.

h. The Panel legislation will provide that the Panel will make recommendations on the basis of evidence submitted by the claimant and submissions of the Austrian Federal Government, as well as any relevant findings of the Austrian Historical Commission. A representative of the Austrian Federal Government will ask the Austrian Historical Commission, as a matter of high priority, to examine, identify and report to the Panel such information as it may obtain concerning property and other assets that may be the subject of *in rem* restitution.

i. The Panel legislation will provide that the Panel will make recommendations to the competent Austrian Federal Minister for *in rem* restitution. The Panel legislation will provide that where *in rem* restitution, although merited, is not practical or feasible, the Panel may make recommendations that the claimant be awarded a comparable property to be recommended by the Panel, in consultation with the competent Austrian Federal Minister. The Panel legislation will provide that such recommendations will be made publicly available (e.g., on the internet).

j. The Austrian Parliament will pass a resolution indicating its expectation that the recommendations will be expected to be approved by the competent Austrian Minister(s). The Austrian Federal Government will support such a resolution.

k. The Panel legislation will provide that the Panel will make its determinations within six (6) months of receiving any claim.

l. The Panel legislation will provide that the Panel will establish its own rules of procedure.

*576 m. The Panel legislation will provide that individual claimants (former owners or their heirs, as defined *supra*

in paragraph 2(e)) are eligible to receive *in rem* restitution (or another appropriate remedy referred to *supra* in paragraph 3(h)) provided that the following criteria are satisfied:

- i. property is currently publicly-owned as defined *supra* in paragraph 3(g); and
- ii. proof of ownership of property at time of loss; and
- iii. claim was never previously decided or settled under prior restitution legislation or claimants or relative has never otherwise received compensation or other consideration for the property in question except in the exceptional circumstances where the Panel unanimously determines that prior settlement constituted extreme injustice; or
- iv. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become accessible

n. The Panel legislation will provide that Jewish communal organizations, including the Israelitische Kultusgemeinde ("IKG"), are eligible to receive restitution *in rem* (or another appropriate remedy referred to *supra* in paragraph 3(i)) for losses of immovable and tangible moveable property (e.g. cultural or religious items) provided that the following criteria are satisfied:

- i. property is currently publicly-owned as defined *supra* in paragraph 3(g)(i)-(iii); and
- ii. property was owned, at the time of loss, by the Jewish communal organization or in case of defunct Jewish communal organization, its legal predecessor; and
- iii. claim was never previously decided or settled under prior restitution legislation or claimants or relative has never otherwise received compensation or other consideration for the property in question except in the exceptional circumstances where the Panel unanimously determines that prior settlement constituted extreme injustice; or
- iv. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become accessible.

o. The Panel legislation will allow applications to be made to the Panel for 24 months after the enactment of the Panel legislation or until one year after the date the Austrian Historical Commission issues its final report, whichever date is later.

p. The Austrian Federal Government will undertake its best efforts to identify publicly owned property as defined *supra* in paragraph 3(g).

q. The Austrian Federal Government will undertake its best efforts to ensure the adoption of similar procedures and processes at the provincial and municipal levels and to secure such restitution at said levels.

r. The *in rem* return of works of art will be excepted from the scope of the Panel legislation.

s. The Government of the United States and the Government of Austria will consult on a regular basis concerning the implementation of the Panel recommendations.

4. Additional Social Benefits to Survivors:

a. Austria will pass the necessary legislation to allow disbursement of "Pflegegeld" of categories up to 7 to victims of National Socialism living abroad as soon as possible.

*577 b. Austria will, as soon as possible, make the following changes in the laws that address social benefits for victims of National Socialism:

- i. amend the Victims Assistance Act so as to abolish the six years' age limit provided for in §1(2) *lif* of the Victims Assistance Act;
- ii. amend paragraph 11 of the Victims Assistance Act to allow for pensions for persons who were Austrian citizens as of March 13, 1938, or who had during the period of 10 years prior to that date their residence on the territory of the Republic of Austria and were not Austrian citizens if they fulfill the other requirements of the Victims Assistance Act;

- iii. amend the definition of "imprisonment" in §1(1) of the Victims Assistance Act to include those who were confined in concentration camp-like facilities, e.g., *Sammellager* ("Collection Camps");
- iv. amend §502(6) of the General Pension Law (ASVG) to the effect that all those born on the present-day territory of the Republic of Austria between January 1, 1933 and March 12, 1938 will be eligible to buy into the Austrian pension system under the conditions of §502(1,4,6).

5. **Restitution of Works of Art:** Art restitution will proceed on an expedited basis pursuant to the Federal Law of December 4, 1998 concerning the works of art from Austrian Federal Museums and Collections. The Austrian Federal Government will undertake its best efforts to address the issue of the return of works of art from Austrian companies and Austrian public entities not covered by the Federal Law. The Austrian Federal Government will undertake its best efforts to encourage the adoption of similar procedures at the municipal and provincial levels. To this end, the Austrian Federal Chancellor will write a letter to governors and mayors urging them to adopt such measures, recalling the resolution by the Austrian Parliament of 1998 urging provincial and municipal museums to research the provenance of the art works in their possession and to return all such art looted during the National Socialist era to the rightful owners.

6. **Hakoah Sports Club:** The former Hakoah sports field was a leasehold property of the Hakoah Sport Club located in the Prater in Vienna. The City of Vienna is prepared to offer to lease to the IKG, on a reasonable and mutually acceptable long-term basis similar to that of the original lease, a similar piece of land in the vicinity of the former location. A contribution of US \$8 million will be made available for the construction of an appropriate sports facility. This will be the final amount for this purpose.

7. **State Archives:** Austria will provide additional resources to the Austrian State Archives to allow better access to the files. Austria will do its utmost to ensure that requests to the Austrian State Archives for information are handled in an expedited and non-bureaucratic manner.

8. **Jewish Cemeteries:** Austria will provide additional support for the restoration and maintenance of Jewish cemeteries, known or unknown, in Austria.

9. **Subsidies to the Annual Holocaust Education Program at the Salzburg Seminar:** Austria will contribute to such a program.

10. **Legal Closure:** The establishment of the GSF in conformity with the principles set forth in *supra* paragraphs 2 and 3, the passage of the legislation necessary to provide victims of National Socialism with the additional benefits referred to *supra* in paragraph 4, and the good faith progress in the implementation of the commitments referred to *supra* in paragraphs 5 to 9, confirmed by a diplomatic note from Austria to the United States, will lead to the dismissal with prejudice of all claims arising out of or related to the National Socialist era or World War II that have been or may be asserted against Austria and/or Austrian companies, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art, by the plaintiffs' attorneys who have signed the Joint Statement and to the United States taking appropriate steps in accordance with Articles 2(2), 2(3) and 3(3) of the Agreement between the Government of the United States of *578 America and the Austrian Federal Government concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund) to assist Austria and Austrian companies in achieving legal closure for all such claims. The term "works of art" is understood to include tangible movable cultural or religious objects.

Austrian provinces and municipalities will not benefit from legal closure, as set forth in Article 3(3) of the Agreement, in relation to claims for *in rem* restitution of publicly-owned property, applying *mutatis mutandis*, the principles set forth in *supra* para. 3(g), unless or until the Austrian Federal Government notifies the Government of the United States that such

province or municipality has adopted similar procedures for *in rem* restitution of publicly-owned property or agrees to accept recommendations of the Arbitral Panel established *supra* in paragraph 3.

Annex B

“Austrian companies” as used in this Joint Statement and the Annexes thereto are defined as follows:

1. Enterprises that, at any given time, had or have their headquarters within the borders of the present-day Republic of Austria as well as their parent companies (past or present, direct or indirect), even when the latter had or have their headquarters abroad.
2. Enterprises situated outside the borders of the present-day Republic of Austria in which Austrian enterprises as described in Sentence (1), at any given time, had or have a direct or indirect financial participation of at least 25 per cent.
3. a. An “enterprise” or “company” means any entity, whether organized under public or private law as a corporation, partnership, sole proprietorship, association of business entities, society, community, cooperative, non-profit organization or otherwise as well as any municipality, private or other public law entity. Any enterprise (in the above meaning) incorporated or otherwise organized under Austrian law shall be deemed for all purposes of this definition to have its headquarters in Austria. An enterprise (in the above meaning) includes its successors, predecessors, former parents, assigns, officers, directors, employees, agents attorneys, heirs, executors, administrators, personal representatives, and current or former shareholders. Any branch office, place of business, establishment or place of work of a non-Austrian company or enterprise (in the above meaning) located within the borders of the present-day Republic of Austria shall be deemed to be a company or enterprise (in the above meaning) that had or has its headquarters in Austria, and any such non-Austrian company or enterprise (in the above meaning) shall be deemed to be a parent or former parent as the case may be, with respect to actions or inactions of such branch or place of business.
- b. A “parent company” means any company that owns or owned a direct or indirect participation of at least 25 percent in any enterprise that had or has its headquarters in the present-day Republic of Austria.

*579 The definition of “Austrian companies” does not include foreign parent companies with headquarters outside the present-day territory of the Republic of Austria in which the sole alleged claim arising from National Socialist injustice or World War II has no connection with the Austrian affiliate and the latter's involvement in National Socialist injustice, unless there is a pending discovery request by plaintiff(s), of which the United States is provided by the defendant with copy to plaintiff(s), seeking discovery from or concerning National Socialist or World War II actions of the Austrian affiliate.

The definitions in the Exchange of Notes and the Joint Statement are meant to be identical (as are the words “company” and “enterprise”) and should be interpreted in an identical manner.

Annex C

List of known^[FN1] World War II and National Socialist era cases Against Austria and Austrian companies pending in U.S. courts subject to this Exchange of Notes.

1.	Filed 4/13/00	00 CV 002851	(a) Maria Kluge, (b) Grete Boritzer Hahn; (c) Elaine Per-Imutter; (d) Michael Pelichow-	(1) Raiffeisen Zentral Österreichische Bank AG (2) Bankhaus Krentschker AG	Edward D. Fagan, Carey D'Avino (Fagan & D'Avino); Robert A. Swift, Denis F. Sheils,	United States District Court for the Southern District of New York; Judge Shirley Kram
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		ski; (e) Zofia Skrzypczak; (f) Stefan Sot; (g) Eugeniusz Juroczko (h) Jerzy Juszczyk	(3) Quelle Bank AG (4) Austrian Banking Institutions 1-100 (5) Österreichische Industrie AG (6) Republic of Austria (7) Austrian Corporate DOES 1-100	Steven M. Steingard (Kohn, Swift & Graf, P.C.); Lawrence A. Kill, Linda Gerstel (Anderson, Kill & Olick, P.C.); Harlan Levy, George Carpanello (Barrett Gravante Carpinello & Stern LLP) William Marks (The Marks Law Firm); Michael Witt (Law Offices) Prof. John M. Van Dyke (Law Offices) Scott W. Wellman (Wellman & Warren LLP)		
2.	Filed 5/26/00	00 CV 3061	(a) Eric Bettelheim, (b) Sylvia Greenbaum, (c) Naftali Faska, (d) John Brand	(1) The Republic of Austria, (2) Dorotheum Auktions- Versatz- und Bankgesellschaft mbH (3) Österreichische Postsparkasse AG (4) Austrian Institutions # 1-100,	Melvyn I. Weiss, Deborah M. Sturman, Joseph Opper (Milberg, Weiss, Bershad, Hynes & Lerach, L.L.P.); Morris A. Ratner (Lieff, Cabraser, Heimann & Bernstein, LLP); Irwin B. Levin, Richard E. Shevitz (Cohen & Malad, P.C.); Burt Neuborne (New York University);	United States District Court for the Eastern District of New York; I. Judge Leo Glasser

				Arthur Miller (Harvard Law School);	
3.	Filed 20/10/00 00 CIV.80 06	(a) Dorit White- man, (b) Alfons Sperber, (c) Hertha Field, (d) Alice Jay Sussman, (e) Anitta Lea, (f) Robert Wein- berger, (g) Rudolf Auspitz, (h) Max Uri, (i) Fritzi Uri, (j) Leo Granierer, (k) Sophie Haber, (l) Ger- trude Fiala, (m) Harriet Mehl- Rottenberg, (n) Gerda Felds- berg, (o) Alex- ander-Sandor Fürst, (p) Ernst B. Riven- Riesenfeld, (q) Lizzy Rapp- Bauer, (r) Ruth Davidovits, (s) Dorothea Wink- ler, (t) Erich Richard Finsch- es, (u) Michael Schwarz, (v) Heinz Bischitz, (w) Lottie Meczes- Schwenk, (x) Luge Svoboda, (y) Friederike Herzl, (z) Robert Klein	(1) Federal Re- public of Aus- tria (2) VEST- Alpine Stahl AG (3) VA Technologie AG (4) Dorotheum GmbH A/K/A Dorotheum Auktions- Ver- satz- und Bankgesell- schaft mbH, (5) Böhler Udde- holm AG, (6) ÖMV AG, (7) Österreichische Industrieholding AG, (8) Raif- feisen Zentral- bank Österreichische AG (9) Steyr Daimler Puch AG A/K/A Steyr Daimler Puch Spezial- fahrzeug AG A/ K/A Steyr Daimler Puch Fahrzeugtechnik AG, (10) Uni- qua Versicher- ungen AG, (11) Austrian DOE corporations 1-100	Jay Fialkoff (Moses & Sing- er LLP)	United States District Court for the Southern District of New York; Judge Shirley Kram

FN1. This list will be updated.

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